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REPORT

R. H. Bell

ON

THE BOUNDARIES

OF THE

PROVINCE OF ONTARIO,

CONTAINING IN PART THE SUBSTANCE OF A REPORT PREPARED FOR THE
GOVERNMENT OF THE PROVINCE IN 1872, BY DAVID MILLS, ESQ., M.P.;
AND AFTERWARDS REVISED AND CONSIDERABLY ENLARGED
BY THE AUTHOR FOR THE PURPOSES OF THE ARBI-
TRATION BETWEEN THE DOMINION OF CAN-
ADA AND THE PROVINCE OF ONTARIO.

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1877.

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ADDITIONS AND CORRECTIONS.

Page 4, line 20, *read* Hontan.

5, note 8, *before* 2, *insert* Ib.

6, line 28, *for* Duc, *read* Du.

line 34, *read* Nadouessi.

note *, *read* Marshal Belle Isle.

7, *insert*, *before* "While" in line 12, the following:—In 1654, two young fur traders joined a band of those Indians, then at Quebec, and were absent in the Indian count two years. They returned in 1656, accompanied by fifty canoes, and two hundred and fifty savages. The Indians said they had come to traffic with the French, and they asked that missionaries might again be sent to the distant country where they then resided, in order to instruct them.

line 20, *read* Dreuillettes.

8, line 6, *read* Ménard.

line 10, *read* Noquet.

line 20, *for* Le, *read* La.

note 1, *for* La Seneur, *read* Le Sueur; *read* Le Gardeur.

9, line 19, *read* M. de Saint Lussan.

line 20, *read* Amikouets.

line 25, *read* St. Mary.

note 1, line 1, *omit* north; *read* Michillimackinac.

10, note 4, *read* Perrot's *Mémoire*.

note 1, line 2, *read* Frenchmen.

line 3, *read* Assinipouals.

line 4, *read* Outagamis.

line 6, *read* fear.

12, line 4, *read* Peninsula.

line 23, *for* Le, *read* La; *read* Membré.

15, line 15, *for* Chanaut, *read* Chouart.

lines 19 and 23, *read* Klistinons.

16, lines 8 and 18, *read* St. Peter's.

note 2, line 1, *for* P. Gingros, *read* Father Guignas; *after* "Pepin" *insert* a period.

18, line 20, *omit* (Ohio).

19, line 23, *read* Phelypeaux.

21, line 40, *et seq.* *for* Ouatanon, *read* Ouatanon.

22, line 10, *read* (Kamanistiquia).

line 14, *for* Robert, *read* Robutel.

23, line 39, *for* 50, *read* 15.

24, lines 2 and 3, *read* Verendrye, had represented to them, that if His Majesty would bear the necessary expenditure, the Western Sea could, &c.

line 34, *read* Kamanistiquia.

line 35, *read* Robutel.

25, lines 23 and 24, *read* who traversed the country sixty years before it, &c.

26, line 11, *for* he, *read* the Chevalier, his son.

line 15, *for* He, *read* The father.

line 34, *for* month, *read* source.

line 37, *after* "1752," *insert*, "where they built the fort already mentioned."

27, line 3, *read* des Prairies.

37, line 35, *for* armed, *read* garrisoned.

41, line 1, *read* Pontgravé.

46, line 20, *after* "frontiers," *insert* comma.

Page 58, line 37, *read* Bay.

59, line 14 *omit* and.

note 1, line 1, *for* Provisions, *read* Provines.

75, line 4, *after* "Louisiana," *insert* comma, in lieu of semi-colon.

78, line 13, *read* attacked.

85, line 24, *read* It has already been shown, &c.

95, line 21, *read* Cahokia.

97, note 1, line 3, *read* States.

line 4, *read* 1782.

98, note 1, line 3, *read* territories west of, &c.

line 9, *read* Washington.

100, line 1, *after* "drawn," *insert* "due."

line 14, *for* propriety, *read* prosperity.

106, line 36, *read* approaches.

107, line 36, *read* 1774.

109, line 9, *after* "vessels," *insert* "of."

118, line 4, *for* 1728-32, *read* 1731-8.

124, note *, line 2, *read* Jérémie.

125, note 1, line 1, *after* "Danois," *insert* comma; *for* and, *read* et.

line 3, *read* la même.

line 4, *read* chercher.

line 5, *read* où il mouilla, et que ce Marin n'a pas entré.

127, line 25, *read* Bourdon—descendu.

line 26, *read* voyagea—aient.

line 27, *read* avait.

line 28, *read* blessèrent—flèches.

129, *for* D'Avangour, *read* D'Avaugour.

131, line 27, *after* "him" *read*, as a note, the following:—Father Charles Albanel and the Sieur Denys de St. Simon, here referred to, were so long delayed in awaiting the Intendant's letters above mentioned, that they were compelled to winter near Lake St. John—their journey, so far, having been by Tadoussac up the Saguenay. They resumed it in June of 1672, and on the 18th of that month entered the great Lake of the Mistassins, having had friendly conference on the way with a large party of the Indians of that name, who besought the missionary to stay among them. He advised them to continue their custom of trading at Lake St. John, where they would always, as theretofore, find goods and meet a missionary. On the 25th of June, our travellers reached Lake Nemiscan, towards Hudson's Bay, and, a few days afterwards, met some Indians who had sent a deputation to Quebec, the year before, to beg for a missionary, and who received them with joy. They then proceeded down the river and entered Hudson's Bay. At several points they made acts of taking possession, which they, as well as the chiefs of several nations who were assembled, signed. *Charlevoix*, i., pp. 477-8. See also *Rel. de la N. F.* 1672-3, pp. 42-4, 47-51, 55; *De la L'herie*, i., p. 143.

ADDITIONS AND CORRECTIONS.

Page 132, line 2, after "Canada," insert "According to Oldmixon, in his *British Empire in America*, the French had, this year, made a settlement some distance up the Moose River, by which to intercept the Indian traffic with the Bay."

135, line 36, read 1673.

149, note *, line 2, read censure.

150, note, line 5, read placée.

line 27, read cette.

lines 30, 31 and 32, read Nemiscau.

line 33, for e, read et; read lieues.

Page 150, note, line 37, read lieues.

line 42, read très.

156, line 43, after "at" insert "[? alias]."

160, line 16, after "it" insert "is."

170, line 5, read affected.

180, line 16, read a half century later.

line 21, for twenty-seven years, read long.

line 22, read Henley.

181, note, line 4, read Maricourt.

last line but one, read *Mémoires*; for e read a.

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REPORT ON
THE BOUNDARIES

OF THE
PROVINCE OF ONTARIO.

The claim of the Dominion Government is understood to be, that the Meridional line drawn *due North*, from the junction of the Ohio and Mississippi rivers, forms the Western Boundary of Ontario, and that the lands' height of the northern watershed of the St. Lawrence, is the Northern Boundary.

The Government of Ontario deny both propositions ; and contend, that the Western limit is the Rocky Mountains ; that the North-western limitary line lies north of the Saskatchewan ; and that the North-eastern line lies in the vicinity of Hudson's Bay. These limits are hereinafter stated with greater minuteness of detail.

The proper location of the disputed Boundaries depends upon the proper construction of Statutes, Treaties, Orders in Council, and Royal Proclamations, interpreted by the aid of contemporaneous facts, and by well-established principles of public law.

Before citing any of those public documents from which the true limits of Ontario are to be gathered, and in which those limits are, with more or less distinctness, set forth, it will be advantageous to state the boundaries Canada had while in the possession of France, immediately before the seven years' war began. It will also be proper to point out with precision how much of Canada was transferred to England by the Treaty of Paris in 1763, and how much was retained by France. It will be proper to show the actual limits of the Province of Quebec under the Act of 1774 ; to point out the changes made by the Treaty of 1783, by which the whole of the south-western part of the Province was ceded to the United States ; to show how that country was, at the beginning of her national existence, unable to fulfill her treaty obligations ; how, in consequence of this failure, the English Government considered themselves in no way bound by the boundary stipulations, but entertained the project of retaining that portion of Canada which had been surrendered to the United States,—a part to be retained as British territory, and a part to be held by mutual arrangement for the benefit of the Indian tribes ; how the English Government believed that a large part of the population of the United States would prefer to be subjects of the British Crown rather than citizens of an unsettled and, for a time, somewhat disjointed Republic ; to point out that with this object in view the British Government continued to hold possession of the northern portion of the United States Territories, the inhabitants of which were governed under the Crown by the commandants of the various military posts, some of whom were made Lieutenant-Governors, and at whose posts civil governments were established ; that with

this object in view it was proposed to divide the old Province of Quebec, leaving the eastern portion to be governed by the civil law of France, and embracing in the western Province not only all of the Province of Quebec, west of the separating line, but all of the country commonly known as Canada, to its utmost limit, whether it was British or United States Territory by the Treaty of 1783; that this policy, so far as it affected the territory which had been ceded to the United States, was abandoned by the Treaty of 1794 (commonly known as Jay's Treaty), in consequence of the war with the French Republic, and the altered position of Spain towards Great Britain and the United States; but that the said policy did not involve any diminution of the territories remaining in the Province of Upper Canada, north of the international boundary. An endeavour will be made to point out the proper location of our north-eastern limit, as provided by the Treaty of Utrecht.

ENGLISH AND FRENCH CHARTERS.

If we were to look to the charters granted at various times by the Crowns of England and France to navigators and mercantile adventurers, we should discover that there was scarcely any portion of North America, between the Gulf of Mexico and the Polar Sea, which had not been granted by each to some of its own subjects.

In 1496 John Cabot and his three sons obtained from Henry VII. a Patent, empowering any one of them, or their deputies, to sail into the Eastern, Western, or Northern Sea to search for Islands, Countries, or Regions, before unseen by Christian people; to affix the banners of England on any place that they might discover; and to possess and occupy the countries so discovered, as the vassals of the English Crown.*

In 1498 a new Patent was issued by the same Monarch to John Cabot, but containing less ample privileges.†

Under the first of these Patents the coast of Labrador was visited; and under the second, the eastern coast of North America was explored from the northern part of Labrador to the southern boundary of the State of Maryland. The second expedition of the Cabots was connected with plans for settlements. Provision was made for emigration to the new world, and a limited monopoly of the colonial trade was conceded.

A third Patent, with larger concessions, was issued to, in part, the same patentees.

The adventurers derived no profit from their explorations, and navigation for a time languished; yet these expeditions were never entirely relinquished.

The Normans, the Biscayans, and the Bretons frequented the fisheries on the American coast shortly after the discoveries of the Cabots,‡ but from the fragmentary records which have been preserved of mercantile adventures, the English mariners seem not to have wholly resigned to a rival nation the advantages arising from their discoveries.§

* Hakluyt III. pp. 25, 26; Chalmers' Political Annals, pp. 7, 8.

† Hakluyt III. pp. 30, 31.

‡ Charlevoix. Hist. de la Nouv. Fr. Vol. I. p. 3.

§ See the account of the Pirate Nutt, in Forster's Life of Sir J. Elliot. Vol. I., pp. 41-75.

It was about the year 1504 that the fishermen of northern France visited the coasts of Newfoundland.*

In 1523, Jean Verazzano, under a Commission from Francis I., took possession of the country between the thirty-third and forty-seventh degrees of north latitude; and in 1535, Gibault and Laudonniere, by authority of Charles IX., founded Carolina in the thirty-fifth and thirty-sixth degrees of north latitude, under a Commission to inhabit and cultivate that country.†

In 1603, Champlain was engaged in the exploration of the St. Lawrence; and in 1609, he, with two other Frenchmen, explored Lake Champlain and the country of the Iroquois, of which he took formal possession in the name of Henry IV. of France.

In the years 1611 and 1612 he explored Lake Huron, entered Saginaw Bay, visited the various tribes of Indians upon the lake, passed down the Detroit River, explored Lake Erie, and, throughout this extent of country, laid the foundation of French sovereignty in the valley of the St. Lawrence. Champlain, for many years, prosecuted the fur trade where Boston now stands; and also to the eastward along the coast, towards the Bay of Fundy, for at least ten years before any English had settled there.‡

It was not until 1606 that a Charter was granted by James I. to Sir Thomas Gates and his associates, for the territories between the 34th and 35th degrees of north latitude. The associates had excepted from their grant all territories in the *actual possession* of other Christian Princes.

No Charter granted by the Crown of either England or France recognised in the natives of the continent any right which the grantees were bound to respect.§

In November, 1603, Henry IV. granted to Sieur de Monts a Patent for North America between the fortieth and forty-sixth parallels of north latitude; and in the following year an exclusive charter for the fur trade of Canada up to the fifty-fourth degree of north latitude.||

As early as 1620, the English Parliament and the English Courts had refused to recognize the validity of a title to vast regions, founded upon a grant from the Roman Pontiff, or upon discovery, unless followed by occupation and settlement. The practical recognition of this principle prevented conflicts for the exclusive possession of the whole eastern shore of the Continent.¶

England, in time, obtained undisputed possession of the country from the sea coast to the Alleghany Mountains and from the Kennebec river in Maine to the St. Mary's river on the northern boundary of Florida.*

In 1604, Poutrincoeur established a colony at Port Royal (now Annapolis) in Acadia, which was surprised and broken up by Samuel Argall, in 1613.† In 1608, the French occupation of the valley of the St. Lawrence was renewed. The King issued a new Commission to De Monts to plant a settlement in Canada. He also gave him a monopoly of the Fur

* Thorne. *Divers Voyages*, Hakluyt Society. pp. 43-47.

† Chalmers, 81, 82. Hakluyt, III. pp. 250-297. N. Y. H. Soc. Col., Vol. I. pp. 45, 46. 2nd ser.

‡ Voyages de Champlain. Hazard I. p. 45.

§ Champlain, 42. Hazard, I. p. 45.

|| L'Escarbot, I. Chalmers, 82. Champlain, 99.

¶ Debates House of Commons, 1620, 1621. Vol. I. 250, 251.

* See Robertson's History of America, Bks. 9 and 10. Bancroft's History of U. S. Vols 1 and 2.

† Argall's expedition. N. Y. Hist. Soc. Vol. 7 N. S.

Trade for one year.* Quebec was founded one year after the Plymouth company had planted a colony of forty-five persons on the Kennebec river. Chief Justice Popham, the principal patron of the colony, died the same year; Raleigh Gilbert withdrew to England to take possession of some property, of which he had become heir; and the colony at once returned to England.†

The London Company obtained a new Charter the following year, which gave them, so far as the King could give, an absolute title to a strip of territory 400 miles in width, and stretching from the Atlantic westward to the South Sea.‡ The Plymouth Company enjoyed a nominal existence until 1620, but they did not succeed in planting, in their American possessions, a permanent colony.§

EXTENT OF THE FRENCH POSSESSIONS IN NORTH AMERICA.

France, early in the seventeenth century, obtained possession of the whole valley of the St. Lawrence, and before the close of the century she had taken formal possession of the whole country from the shores of Hudson's Bay to the Alleghany Mountains, and the whole valley of the Mississippi from the source of that river to the Gulf of Mexico.

L'Escarbot, an advocate of Paris, in his "*Histoire de la Nouvelle France*," published in 1609, defines the boundaries of the French possessions in North America, as extending "on the west to the Pacific Ocean, on the south to the Spanish West Indies, on the east to the North Atlantic, and on the North to the Frozen Sea."||

Baron La Hontan, whose "*Memoirs of Travels in North America*" embraced the decade between 1683 and 1693, says:—"All the world knows that Canada reaches from the 39th to the 65th degree of north latitude, that is, from the south of Lake Erie to the north side of Hudson's Bay, and from the 284th to the 336th degree of longitude, viz., from the River Mississippi to Cape Race.....*Were I to reckon in all the countries that lie to the north-west of Canada, I should find it larger than Europe; but I confine myself to what is discovered, known, and owned—I mean to the countries in which they have forts, magazines, missionaries, and small settlements.*"¶

Captain Vetch, (a British officer, at one time Governor of Nova Scotia,) writing in 1708, says:—"As to the situation of the country possessed by the French in North America, and commonly all comprehended under the prevailing name of Canada, the seat and residence of their Governor-General being upon the place properly so called—its situation is from about 54 degrees of north latitude to the eastward of Port Nelson, in the country of the Esquimaux, extending itself all the way south-west to the mouth of the Mississippi river, which falls into the Bay of Appalachio, in the great Bay of Mexico, about the latitude of 28 degrees and 30 minutes, comprehending as it goes,

*Chalmers, 82.

†Doc. History N. Y. Vol. III. pp. 1-9.

‡Chalmers, 25. Hazard 1, pp. 58-72.

§ Bancroft's Hist. U. S., vol. 1. Mass. Hist. Col., vol. xix., 5-11.

|| Histoire de la Nouvelle France, Marc L'Escarbot.

¶ Pinkerton's Collection, Vol. xiii.

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their part of Newfoundland, the Island of St. Peter, Acadia or Nova Scotia, which borders on the British Province of New Hampshire, whose boundary to the eastward is the little river St. Croy (as the French allege)."^{*}

Such were the commonly claimed and recognized limits of the French possessions in North America before the war of the Spanish succession began.

The French Government all along denied the right of England or her colonies, to any territory west of the Alleghany mountains. They contended "that the watershed should serve as a boundary to both nations along the frontiers between New England and the other colonies which lie along the same line, as far as including Georgia on the one side, and Canada and Louisiana on the other."[†]

The French Governors of Canada undertook to extend their possessions south of the St. Lawrence, by force of arms. In this they failed. They subsequently resorted to every rational means to secure the friendship of the Iroquois Confederacy. The French colonists of North America gave but little attention to agriculture; they were mostly engaged in the fur trade. Many of them resided among the various tribes of Indians between the Ohio river and Hudson's Bay. They joined the Indians in their hunts, adopted their usages, and assisted them in bringing their furs to the Canadian markets. At an early date Indians came from the plains of Illinois, from the west of Lake Superior, and from the shores of Hudson's Bay, to sell their peltries at Montreal.[‡]

The Government of Canada, in order to prevent mischief, and to preserve some semblance of authority over those who engaged in the Indian trade, forbade the Canadians to reside in the Indian countries.[§] They recalled the *Coureurs des bois* on account of the riot and disorder which they occasioned. They threatened them with severe punishment if they failed to obey. These threats proved abortive. The only effect they had was to cause these daring adventurers to carry their peltries to the border towns in the English colonies, especially to Albany, instead of to Montreal and the other trading posts in Canada. The Canadian Government adopted the licensing system, which was generally adhered to. No Canadian was suffered to trade with the Indians in their country without a license from the Governor, and subject to such regulations as the license ordained. The whole country was divided into hunts, and no license authorized the holder to trade in furs beyond the limits of a single hunt. The license forbade the holder under severe penalties to hunt or to trade beyond his assigned limits.||

When the Governor had issued for any hunt as many licenses as its commerce would well bear, it became necessary, as the number of hunters and fur traders increased, to extend the dominion of France over the possessions of more distant nations. In time these licenses

^{*} Captain Vetch to Lords of Trade and Plantations, 1708, Pownall MSS. Vols. I. and IV.

[†] Entick's History, Vol. I. Bancroft, Vol. 3, ch. 8, Eng. ed. Secret Journals of Congress, Vol. 4.

[‡] In the first volume of Entick's History will be found much of the correspondence relating to the disputed boundaries.

[§] See the Letters of Frontenac and the Letters of Duchesneau to the Marquis de Signeioy. Paris Archives, 1st, Vol. I. pp. 153-155; Vol. II. p. 64, p. 128; 2nd, sr. Vol. II. p. 1, p. 57.

[§] 2 Sr. Vol. VI. p. 85; Orders du Roi au sujet de la traite du Canada. N. Y. Col. Doc. Vol. IX. p. 131.

|| Pownall on the Colonies, Vol. 2; Parkman's Old Régime, p. 305; Archives de Paris, 2ème série, Vol. 6, p. 85; Vol. 7, p. 338; 3ème, Vol. 6, pp. 13, 22, 57, 274; Vol. 8, p. 943; Bougainville's Memoirs; also numerous papers in N. Y. Hist. Documents.

were issued to a particular class—"Military officers and the descendants of a decayed nobility." They were generally well educated, polished in their manners, and fond of exercising authority. In their employment they had a few clerks, chiefly natives of the Province. These possessed a sufficient amount of instruction to enable them to exchange with the Indians articles of European merchandise for their furs. They carried these goods into the remotest districts of the Indian countries. They wintered with the savages and returned the next season, after the opening of navigation, with the peltries which powder and lead, rum and tobacco had purchased. Each clerk was accompanied by a number of *voyageurs* or *engagés*, who were hardy, poor, and ignorant, and who, from boyhood, had led a vagabond life.

For a long time but twenty-five licenses were granted each year, and when the favoured recipient of the license did not wish to go into the Indian country, he sold his license to some merchant of Quebec or Montreal. The price received was usually six hundred crowns. Each license authorised the possessor to send two canoes into the Indian country. Each canoe was manned by three *voyageurs*. The goods required were valued at 500 crowns to the canoe, with an addition of 15 per cent. The furs brought back in a successful venture were valued at 8,000 crowns. The merchant received, of this sum, 600 crowns for his license, 1,000 crowns for his goods, and 40 per cent. on the balance of the sales, being 2,560 crowns more—in all, 4,160 crowns. The remaining 3,840 crowns were divided among the six *voyageurs*.

The tempting prospect of the rapid accumulation of large fortunes which the fur trade afforded, drew Intendants and Governors into silent partnerships with speculative traders, especially at those posts which were farmed out for the King. The borders of the Province were constantly enlarged. This policy was continued up to the hour of its surrender. It was to the corrupt connection of the leading officials with the trade, that Montcalm largely attributes the conquest of Canada.*

There cannot be a doubt that many of the French *Voyageurs* besides M. Perrot and the Duc L'Huys had explored a large part of the country north and west of Lake Superior, at a very early day, but of their adventures we have no account, because they were not sufficiently educated to record them. We have occasionally incidental allusions in public documents, in works on geography, and in memoirs, which prove this to have been the case, and to some of these allusions reference may be made.

Paulle Jeune, in a letter to his superior, M. Vincent, written in September, 1640, says: "In the neighbourhood of this nation, (the Winnebagoes) are the Nadonessi (Sioux), and the Assinneperas (Assiniboinés) . . . I will say, by the way, that the Sieur Nicolet, interpreter of the Algonquin languages for gentlemen of New France, has given me the names of these nations *whom he has visited, for the most part in their own countries.*"

But it was not wholly through the instrumentality of the fur traders that the French authorities, at a very early period, acquired an accurate knowledge of so vast an extent of country. As early as 1641, Jogues and Raymbault preached to the Indians at the outlet of Lake Superior.† A few years later, the Iroquois Confederacy waged a war of extermination

* Letter to Marshall. Belle Isle. N. Y. Col. Doc., vol. IX.

Relation, 1641. Vimont. Bancroft's U. States, Vol. II, ch. 20,

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against the Eries, the Hurons and the Ottawas. The Eries were wholly exterminated. Large numbers of the Hurons and the Ottawas perished. The village of St. Joseph was destroyed. The villages of St. Ignatius and St. Louis shared the same fate. Fathers Jogues, Daniel, Brébeuf, and Gabriel Lallemant were put to death. For a time, the scattered remnants of the Hurons were collected in the Grand Manitoulin Isle. The Iroquois had, in their intercourse with the people of New Amsterdam, learned the use of firearms, and they had no sooner done so, than they asserted their superiority in every direction. They, for a time, overawed the colonists of the St. Lawrence; and the terrified Hurons and Ottawas fled, some to a place called Chagouamigon or La Pointe, at the south-western extremity of Lake Superior, and others beyond the Mississippi. Those who settled at La Pointe were almost immediately followed by missionaries and traders.*

While the Indians were disposing of their peltries, the two young Frenchmen who had returned with them, entertained voyageurs with stories of their adventures, their exposure to dangers, and their narrow escapes. The cupidity of merchants and traders was awakened at the sight of their numerous packs of valuable furs, and the zeal of ecclesiastics with their tales of numerous villages of Sioux to the west, and of the Knistenaux and other tribes of the North, who were still strangers to the Christian faith. Thirty young Frenchmen, whose imaginations were excited by these stories, equipped themselves to accompany the Indians to their own country, to bring back the beaver skins taken in the distant wilderness. Fathers Leonard Garreau, and Gabriel Dreuilletes, who were well versed in the Huron and Algonquin languages, were sent as religious instructors. They embarked with the Indians on their returning voyage. But the whole party were attacked by a band of the Lower Iroquois; Father Garreau was killed; and the party were driven back.†

But the French at even an earlier date were not wholly ignorant of the northern Indians. Paul Regenneau, the Superior of the Huron missions, observes that, "to the North of the Hurons, there are several Algonquin nations, who never cultivate the earth, but sustain themselves altogether by the chase or by fishing. These nations occupy the country up to the North Sea, which we judge to be distant from us in a straight line more than three hundred leagues; but of this, we have no other knowledge of those nations except that derived from the report made to us by the Hurons and some of the nearer Algonquins *who go there to trade for peltries and beavers, which are found there in great abundance.*"‡

From this statement it will be seen that the northern Indians found a market for their furs at Quebec and at Montreal, and many of them who came directly to Montreal, to dispose of their furs, were subsequently met by the French traders upon the shores of Hudson's Bay.

In 1659, several fur traders went to Green Bay. Two of them passed the winter upon the shores of Lake Superior. They explored the country and visited the surrounding tribes. They found, at six days' journey to the south-west of Lake Superior, a remnant of the Huron Nation. These informed the Frenchmen that after having retreated from the Iroquois, across mountains and rocks, through the depths of these vast and

* Relation of 1664-1665, 1666-1667, by F. Le Mercier.

† Preface to the Relation of 1655-6, by Jean de Quens, Sept. 7, 1656. Relation of 1655-6.

‡ Relation of 1647-8.

unknown forests, they at length arrived at a beautiful river, large, wide, deep, and resembling the great St. Lawrence; where they found numerous villages of the Sioux. These two Frenchmen also described the Sioux of the plains, whom they claimed to have visited. In the following summer they returned to Quebec, with an escort of sixty canoes and three hundred Indians.*

In 1660, the Rev. R. Menard, with eight other Frenchmen, went to the Huron settlement of Chagouamigon or La Pointe. They left the Three Rivers on the 28th of August, and they reached La Pointe on the 15th of October. They suffered greatly during the winter from extreme hardships. The Rev. R. Menard perished in the forest, on his way from La Pointe to the Moquet Islands, in the mouth of Green Bay. He was succeeded by the Rev. Claude Alouéz, who explored the shores of Lakes Superior and Nepigon. He travelled among the Sioux, far to the west of Fond du Lac, and in describing them, he gives for the first time the name of the great river Mississippi, of which the Indians told many marvellous stories.†¹

The French had a military post at the Baye des Puans as early as 1670, for in the Relation of that year it is stated, "that we found affairs there in a pretty bad posture; that the savages were much soured against the French who were there trading; that they treated them ill, robbed them, and carried away their merchandise. The cause of this disorder was the treatment which the Indians received from the French soldiers. At what time the French first established a military station at Le Baye does not seem certain, but in 1684 Du L'Hut was in command at this post.²

In 1666, M. Grosellier was roaming among the Assiniboines in the region of Lake Winnipeg, and was conducted by them, during that year or the year following, down the Nelson's River to the shores of Hudson's Bay.‡³

In September, 1669, Marquette took the place of Alouéz, at La Pointe. At this

* Relation of 1659-60, Rev. Claude Boucher.

† Relation of 1666-67, By F. Le Mercier

1 The Mission, which was first established at La Pointe or Chagouamigon by R. Menard in 1660, was re-established by Claude Alouéz, 1st of October, 1665, and called the Mission du Sainte Esprite. In 1692 Frontenac sent Sieur La Seneur to La Pointe to build a fort and garrison it. La Gardeur de Sainte Pierre, who was stationed here, was succeeded in command by Linetot in 1726. The fort, which was situated at the south end of Magdalen Island, was rebuilt, and a garrison of 30 soldiers kept here. The French were then at war with the Foxes, and it was necessary to pass to the country of the Sioux by this route. It was occupied by traders, missionaries, and officials. (Min. Hist. Col., Vol. 1, p. 319. Wis. Hist. Col., Vol. 4, pp. 247-8. Smith's Hist. Wisconsin. Shea's Hist. Am. Missions.)

2 In 1684 the Governor of Canada ordered Du L'Hut, who was commandant at Green Bay, to return to Fort Niagara, to punish the Senecas and Cayugas, and to state how many allies he could bring. These Indians had plundered seven canoes, owned by 14 Frenchmen, who, with 15,000 pounds of goods, were going to trade with the Sioux. N. Perrot, who was trading with the Foxes, rendered him great assistance in collecting allies. In 1686, the Governor of Canada ordered Du L'Hut to proceed to the Detroit river and watch whether the English passed into Lake St. Clair. In obedience to this order Du L'Hut left Green Bay (Baye des Puants) and, with fifty armed men, established a fort, called Fort St. Joseph's, on the River St. Clair, near to where Fort Gratiot now stands. (See Memoir of Tonty, and N. Y. H. Col., Vol. IX. pp. 255, 261, 327, 362-364, 402.)

‡ N. Y. H. Col. Vol. IX. p. 797.

3 On some of the old French maps the Pigeon river was called Rivière Grosellier. He seems to have been the first Frenchman of note who went into the Assiniboine country. See Jeffery's map.

time there were about 1,500 Ottawa and Huron Indians residing there. The Sioux were then in the possession of the shores of Lake Superior. Marquette sent them presents; he bespoke their friendship for the French and the Indians who might be found in their company. He asked from them leave for the French and their Indian guides to pass freely to the country of the Assiniboines and the Knistineaux. The emigration of the Ottawas and Hurons to La Pointe had greatly facilitated the explorations of the French in the region of Lake Superior and the Upper Mississippi. But in the spring of 1671, the Indians at La Pointe had treacherously murdered and eaten some of the Sioux, with- in whose dominions for nearly twenty years they had found a peaceful retreat. After these deeds of treachery and cruelty, they were obliged to fly from the vengeance of the Sioux warriors to the banks of the *Saut Ste. Marie* and the shores and islands of Lake Huron.*¹

In 1670 La Salle in traversing the country south of Lake Erie discovered the River Ohio, which he traced as far as the rapids at Louisville, or, as some say, to the Mississippi.†

In 1670, The Intendant Talon sent M. de Saint Lusson, as his sub-delegate to the Saut Ste. Marie, to take possession of all the surrounding country which had been explored on behalf of the Crown of France.‡

Nicholas Perrot, who had explored a great portion of the country as far west as the Mississippi River, was asked by the Intendant to lead M. Lusson to that country. They reached Montreal in October. They wintered among the Amikonets, a tribe of Otta- was, on the Great Manitoulin Island. They also saw the Sauteux. M. Perrot was well acquainted with the Indian languages, and explained to them the purpose of their mission. He dispatched messengers to the various tribes in the vicinity of the Falls, inviting them to assemble at the Saut. They visited various Indian tribes on the shores of Lake Michi- gan, whom they urged to be present at the Falls of St. Mary's, when formal possession of the country was taken. They sailed thither. They were accompanied as far as Green Bay by Chiefs of the Sacs, the Foxes, the Pottawattamies, Kickapoos, the Miamis and the Winnebagoes. Upon their arrival at the Saut, they found that the Chiefs of the Knisti- neaux, the Monsonis, as well as those of various other northern tribes, had already assem- bled. A cross was set up in their presence. The arms of France were fastened to a cedar tree hard by. The numerous tribes there represented put themselves *under the pro- tection of the King* of France. Here Saint Lusson with his sword in one hand, and a sod of earth in the other proclaimed that he took possession, "in the name of Louis XIV. King of France and Navarre, of Sainte Marie du Saut, Lakes Huron and Superior, the Is- land of Manitoulin, and all the countries, rivers, lakes, and streams, contiguous and adja- cent thereto, discovered or not, and extending to the sea upon the north, the west, and the south." The French had, at that time, a square fort of cedar pickets at the Falls of

* Neil's Hist. of Minnesota, pp. 111, 112. Also, Relation of 1576-71.

† Marquette returned with the Hurons to Pointe St. Ignace, on the north shore of the straits of Machillimac- kinac, and the Ottawas fled to Great Manitoulin Island, whither they were accompanied by Louis Andre, who established the Mission of St. Simon at their new abode. These two missions were, therefore, established in 1671.

‡ See Parkman's Discoveries of the Great West. pp. 22, 23.

§ Lettre de Talon à Colbert, Oct., 1667.

St. Mary ; and Saint Lussou had been ordered to explore the country, to discover its mineral resources, especially its mines of copper.*

In 1670 and 1671 La Salle discovered the Illinois, and in this year the Jesuit missionaries made a complete map of the coast of Lake Superior.†

About this time Marquette learned from the Illinois Indians, who had been driven beyond the Mississippi by the Iroquois, and who came yearly to La Pointe to trade with the French, of the great river which they crossed in their journey. He purposed exploring it, but the sudden flight of the Hurons and Ottawas, in 1671, from that place, indefinitely postponed his project.‡

The early fur traders at Green Bay, or, as it was then called, Baye des Puans, discovered that many Indian tribes resorted thither as a favourite fishing station, and that for this reason it was well adapted to become a station for carrying on the fur trade.§ The Jesuits also selected it as a missionary station, and Father Claude Alouez was sent hither in 1669 to found the mission of St. Xavier.¶

He was joined by Dablon the following year. They explored the surrounding country. They ascended the Fox River. They crossed Lake Winnebago. They visited the towns of the Mascoutins and the Miamis, whom they found living together. Here they again heard of the existence of the great river Mississippi. In 1671 they explored the country of the Foxes.¶

In 1673 Joliet was sent by Governor Frontenac to discover the Mississippi. Marquette was chosen to accompany him. Joliet went to Michillimackinac, and called at Point St. Ignace for Marquette, who had continued to reside there with the Hurons since their flight from La Pointe. With two canoes and five voyageurs, and with the necessary supply of smoked meat and Indian corn, they began their voyage on the 17th of May.* They passed up the Menomonie River, and down the Wisconsin, to the Mississippi, which they reached on the 17th of June, having been just one month in making the voyage. They explored the Mississippi as far as the mouth of the Arkansas. In 1674, Joliet returned to Quebec. He lost

* See N. Y., Hist. Doc., Vol. IX, 63, 67, 70, 76, 88, 97, 803, 804. Procès Verbal which is given, Relation 1670, p. 2.

† Perrot. Memoires, 119, 120. La Salle's Memorial to Frontenac : N. Y. Hist. Doc., vol. 9, 787, 789.

‡ Relation, 1670-71. Nelle's Hist. of Minnesota, pp. 111, 112.

1 Marquette took the place of Alouez at La Pointe on September 13, 1669. He says : " I sent them (the Sioux) a present by an interpreter to tell them to recognise the Frenchman everywhere, and not to kill him or the Indians in his company ; that the black gowns wish to pass to the country of the Assinipones, and to that of Kiliatinaux ; that he was already with the Outagames (the Foxes), and that he was going this fall (1669) to the Illinois, to whom they should leave a free passage. . . . Would that all these nations loved God as much as they feared the French.

§ Smith's History of Wisconsin.

2 Baye des Puans always remained the centre of an extensive trade. Numerous bands of Indians assembled at this post. The French always kept a garrison here. At the time of its surrender to the English it contained forty or fifty French and half-breed families. It was at this point that Lieut. Gorell and his men were placed, and from which they escaped without loss of life during Pontiac's war. See Gorell's Journal in Wis. Hist. Col., vol. 1, pp. 24-48.

¶ Relation, 1671.

¶ Relation, 1672.

* Parkman's Discoveries of the West, ch. 5.

the journal of his travels by the upsetting of his canoe at the foot of the Lachine Rapids, in sight of the French settlements upon the St. Lawrence.*

In 1673, Frontenac built Fort Frontenac at Cataraqui, as a suitable point to carry on a traffic with the Iroquois Indians, and to prevent their interfering with the northern fur trade.† Vessels were building to command Lake Ontario, and to inspire the Five Nations with respect and fear.‡ In 1674, La Salle went to France to facilitate his western discoveries. In 1675, he obtained from the King a patent which gave him a monopoly of the hunting and fishing upon Lake Ontario. He was put in possession of Fort Frontenac. He was to maintain a garrison, build a church, and support a Franciscan missionary.§ A new fort of stone, having four bastions, was quickly erected by La Salle.

In 1678, La Salle explored Western New York, and visited the Senecas to obtain their consent to the erection of a fort at Niagara and the building of a vessel upon Lake Erie. During this year he constructed a palisade fort at the mouth of Niagara River, and in the following year the *Griffin* was built above the Falls, for navigating the Upper Lakes. La Salle, in May, 1678, obtained a second patent from the King "to permit him to discover the western part of New France," and for the execution of his enterprise he was authorized to construct forts wherever he deemed it necessary. He had full powers given to him to accomplish his purpose. He was to complete his enterprise within five years. La Salle was to carry on no trade whatever with the savages who had been in the habit of taking their peltries to Montreal. The King was anxious for the discovery of a country through which it was probable a road might be found to penetrate to Mexico.||

The traders and *coureurs des bois* were in the habit of assembling at Michillimackinac. La Salle, at this time, had sent fifteen men with goods into the upper country to trade with those Indians who did not carry their peltries to Montreal. His *engagés* had orders, after completing their purchases, to go to the Illinois and make all necessary preparations for his coming. The majority of his men were seduced by the lawless traders of the districts into which they had been sent; they disobeyed his orders; squandered his goods; or used them in trading with the Indians on their own account. He failed in this effort to obtain the means by which he had hoped to prosecute his enterprise.¶

La Salle explored the western shore of Lake Michigan; and Tonty, his enterprising and trusty friend, explored the eastern shore. They built upon the south-east coast of the lake, a fort, at the mouth of the St. Joseph's River. They ascended this river to the carrying-place. They crossed to the Illinois, which they descended to the Indian town of Peoria, three miles below which, upon a hill, they erected a fort, which they called Fort Crevecoeur. At this place La Salle commenced the construction of a small vessel with which he hoped to navigate the Mississippi. But he had placed on board the *Griffin* the anchors and rigging for the vessel to be built here, and they were lost with her.

In the winter of 1680, La Salle, with five companions, started from Fort Crevecoeur,

* Letter of Joliet.

† Letters of Frontenac.

‡ N. Y. His. Doc., vol. 9, pp. 91, 95, 96.

§ Patent is given in Falconer's Mississippi. N. Y. Hist. Doc., vol. 9, pp. 127, 795.

|| See Falconer's Mississippi, and Spark's Life of La Salle.

¶ Ibid. also, Parkman's Discoveries of the Great West.

on an overland journey for Fort Frontenac. They passed up the Illinois and reached the fort which they had built upon the St. Joseph's; from this point they travelled across southern Michigan to the Detroit River, and crossing the river, they continued their journey through the South-Western Peninsular, to the point of Pelee on Lake Erie; and from thence they proceeded to Niagara, and from this place to Frontenac.*

In 1680, Acceau, Hennepin, and Du Gay, were sent by La Salle from Fort Creve-cœur to explore the Upper Mississippi. They went up as far as the St. Croix River, and they traversed the country northward as far as Mille Lac. They met, on their returning voyage, near the Falls of St. Anthony, Daniel Greysolou Du L'Hut, with four well armed Frenchmen. Du L'Hut had explored the country between Lake Superior and the sources of the Mississippi. Du L'Hut had left Quebec in the autumn of 1678 for the purpose of exploring the region about the head-waters of the Mississippi, and establishing friendly relations with the Sioux and the Assiniboines. In the following year he visited various villages of the Sioux, and took possession of the country on behalf of the King of France, *under the authority of the Governor of Canada*. In the autumn of 1679 he built a trading post and fort of pine logs on Lake Superior, at the mouth of the Kamanistiquia River, where he held a council with the Assiniboines, the Lake tribes, and the Sioux, with a view to establishing a peace amongst them. He wanted them to bring their peltries for sale to his new fort, and peace was necessary to his success. In the following year he explored the country as we have seen, to the westward, where he met Hennepin, and the two parties descended the Mississippi together as far as the junction of the Wisconsin, and thence they proceeded to Green Bay.†

In 1682, Le Salle, with Tonty, Membre, twenty-three Frenchmen, and eighteen Indians who insisted upon taking with them ten squaws and their children, set out on an expedition to explore the southern Mississippi. They reached the river on the 6th of February. On the 24th they encamped at the third Chickasaw bluffs. Here they built a fort, which they called Fort Prudhomme—named after one of La Salle's men, who was here lost in the forests for nine days. They left the fort in charge of a small garrison, and proceeded down the river. On the 13th of March, they reached the mouth of the river Arkansas, where they raised a cross, and attached to it the arms of France; and La Salle, in the King's name, took formal possession of the country. They visited many Indian tribes as they journeyed towards the Gulf. On the 6th of April they reached the mouth of the Mississippi, explored its estuaries, and on the 9th they took formal possession "of all the seas, harbours, ports, bays, adjacent straits, and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers, from the mouth of the Ohio, as also along the Mississippi and the rivers which discharge themselves therein, from its source beyond the country of the Sioux to the Gulf of Mexico." This, it will be observed, La Salle was authorized to do by his Letters Patent of 1678. It will be also observed, that the discoveries La Salle was authorised to make east of Mexico, were said to be in the western part of New France.‡

* Ibid.

† Hennepin's *Nouveau Voyage*; Parkman's *Discoveries of the Great West*, pp. 251-9; N. Y. Hist. Doc. vol. 9, p. 795.

‡ Tonty's *Memoir*; Falconer's *Mississippi*; Spark's *Life of La Salle*; Parkman's *Discoveries of the Great West*; Albach's *Annals*.

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La Salle, upon his return, built a fort about a league below Le Fort des Miamis, and upon the south side of the Illinois River. This fort was erected upon a very high rock, the top of which was well nigh inaccessible. It was long known as Fort St. Louis. Here La Salle sought to establish a confederacy of the Western tribes, in order that they might successfully resist the Iroquois invasions. He pointed out to them their present dangers, and the advantages of union. He succeeded in uniting the Miamis, the various sub-tribes of the Illinois, the Shawanese, and the scattered remnants of bands of Indians who had been driven from the colonies of New England and Virginia, and had recently come to the shores of Lake Michigan. Nearly 20,000 Indians had come to reside in the vicinity of Fort St. Louis. For the present, La Salle expected to carry on the fur trade of the west by the route of the St. Lawrence, but he looked forward to the establishment of a separate colony which should embrace the entire valley of the Mississippi. He considered himself entitled, by his patent from the King, to bring up his supplies and men from Quebec and Montreal, as it had, by the King's directions, received the express sanction of the Governor and Intendant.*

La Barre, who had succeeded Frontenac, threw every possible difficulty in the way of La Salle. He represented La Salle as being the cause of the Iroquois incursions against the western tribes. He calumniated him in his letters to M. Seignelay. He pronounced his discoveries upon the Mississippi, imaginary. He declared that La Salle was building up in the west an imaginary kingdom for himself.†

In 1682, La Salle addressed Count Frontenac a letter, asking him to send more soldiers to Fort Frontenac at his (La Salle's) expense. Frontenac, when he received the letter, was about sailing for France. He gave it to La Barre, who not only did not do as requested, but he withdrew the soldiers who were already at the fort, and he then seized it because it was defenceless. He then sent La Chesnaye and Le Ber, two of his own associates in the fur trade, who were two of La Salle's most implacable enemies, to take possession of Fort Frontenac, notwithstanding the remonstrances of La Salle's creditors. They lived on La Salle's stores, sold his goods for their own profit, and turned cattle to pasture upon his growing crops. La Barre, as already stated, had become the partner of certain merchants, the rivals and enemies of La Salle. The Governor of New York was urging on the Iroquois to undertake the conquest of the western tribes, in order to divert the fur trade from Montreal to Albany, and La Barre was scarcely less favourable to such an enterprise, as he sought the ruin and death of La Salle. He detained the men whom La Salle had sent to Montreal for supplies, and advised the Iroquois to plunder La Salle's canoes and to seize him as an enemy.‡

In the autumn of 1683, La Salle left Tonty in command at Fort St. Louis, and started for France, intending to sail from Quebec. On his way he met Chevalier de Baugis, an officer of the King's dragoons, whom La Barre had commissioned to take possession of Fort St. Louis, upon the Illinois River. De Baugis carried with him letters from the Governor, ordering La Salle to proceed to Quebec. Notwithstanding the outrage, La Salle wrote to Tonty

* Ibid.

† N. Y. Hist. Doc. Vol. III. pp. 447, 451.

‡ See note to Parkman's discoveries of the West, p. 299. *Mémoire pour rendre compte à Monseigneur le Marquis de Seignelay de l'Etat, où le Sieur de la Salle a laissé le Fort Frontenac, pendant le temps de sa découverte.* Archives de Paris, l'ère Série. Vol. II. p. 305. *Mémoire par M. Denonville, 10 aut. 1688.*

to treat Chevalier de Baugis kindly. De Baugis reached Illinois, where he took possession of the fort on behalf of the Governor. Tonty remained as the representative of La Salle.* Upon reaching France, La Salle addressed to the Minister a memorial, recounting what he had done and what he had suffered to extend the dominions of the King. He recounted how that during five years he had made five journeys of more than 5,000 leagues in all; how that for the most part these journeys were made on foot, with extreme fatigue, through snow and through water, without an escort, without provisions, without bread, without wine, without recreation, without repose. He told how that he had traversed more than six hundred leagues of country hitherto unknown; that he did this among savage and cannibal nations, against whom he had to contend daily, though accompanied only by thirty-six men, and consoled by nothing save the hope of succeeding in an enterprise which he thought would be agreeable to His Majesty.†

The King condemned the conduct of La Barre. He wrote to La Barre, informing him of what he had heard, that he had improperly taken possession of Fort Frontenac; had driven away La Salle's men; had suffered his lands to be laid waste; had told the Iroquois to seize him as an enemy to the colony; and had made a statement as to Fort Frontenac having been abandoned, at variance with truth.‡

In April, 1684, La Salle received a new Patent,§ and he sailed on the 24th of July for the mouth of the Mississippi, with 280 colonists. Beaujeu was the naval officer in command. He was jealous of La Salle, and hostile to him. He declared that "it was disagreeable to him to be under the orders of La Salle, who had no military rank." They missed the mouth of the Mississippi River through the treachery of the pilot. They landed far to the west on the shore of Matagorda, or St. Bernard's Bay, near the mouth of the Colorado River, in what is now Southern Texas. Here they, for the time being, established a colony; many of them died of disease soon after landing. They had been treacherously deserted by Beaujeu, who carried away with him the ammunition and other necessary supplies. La Salle searched for the Mississippi, with a view to the removal of his colony. But in the meantime he purposed obtaining assistance from Illinois, and he started thither, but was murdered on the way by some of his own men, near the Trinity river, in Texas. The assassins quarrelled with and murdered each other. The survivors of the party, led by Joutal, continued their journey in a north-easterly direction, and, after having travelled for two months, reached the Arkansas, near its junction with the Mississippi. The colony suffered great hardships. The most of them perished; the few who survived of those that remained, were seized by the Spaniards as trespassers upon their dominions, and sent to the fleet and to the mines.||

In the spring of 1683, Governor de la Barre sent Nicholas Perrot, with a command of twenty men, to establish alliances with the Iowas and the Sioux. He did so. He built a fort below the Wisconsin, on the east bank of the Mississippi, which was known as Fort

*Tonty's Memoir in Falconer's Mississippi, pp. 74-75.

†La Salle's Memoir to M. Seignelay given in Falconer's Mississippi.

‡Archives de Paris, 1ère série, Vol. II. p. 334; 2ème série, Vol. IV. p. 420.

§Commission du Sieur de la Salle pour Commander dans tous les pays qui seront assujettis à la France, à l'Ouest du Canada. Archives de Paris, 1ère série, Vol. II. p. 350.

|| Louisiana Hist. Col. Vol. I. Joutal's Journal. Parkman's Discoveries of the Great West.

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St. Nicholas. During the winter the French visited the country of the Sioux, and at the opening of navigation a deputation of them came down to the post and carried Perrot with great parade on a robe of beavers' skins to a lodge of their Chief, chanting songs and weeping over the heads of Perrot and his party, according to their customs. While Nicholas Perrot and his party were among the Sioux, the Indians plundered several French traders, who had come amongst them, of their goods. Under the threat of Perrot, the goods were restored to their owners. M. Perrot built a small fort at the entrance of Lake Pepin, and another a little above the lake, upon the opposite side. The first he called the Fort of Tears Lake, and the other Fort Bonsecours.*¹

In 1684, Du L'Hut and his companions were trading with the Indians and exploring the country between Lake Nepigon and Nelson River. He writes to Monsieur de la Barre, the Governor, on the tenth of September of that year, informing him that before leaving Lake Nepigon in June, he had given the savages all the presents necessary to prevent them going to trade with the English; that he had met Sieur de la Croix and his two comrades who had been sent by the Governor with despatches for Sieur Chanaut at the River Nelson; that he will have those despatches forwarded by Mons. Péré, who is hereafter referred to as a northern explorer. Du L'Hut informed the Governor that these northern savages have great confidence in him; he assured La Barre that before two years elapsed not a savage would go to the English at Hudson's Bay. He said that the Klistinous (Knistineaux), the Assiniboines, and other northern tribes who compose the nations to the west of Hudson's Bay (*Mer du Nord*) had promised to come the next spring to the fort which he had built on the river *à la Maune at the head of Lake Nepigon*; that he next purposed to make one in the country of the Klistinous which would entirely bar their descent; in fine he declared himself ready to lose his life if he did not absolutely hinder the savages from descending to the English†

In 1687, a brother of Sieur Du L'Hut was engaged in trafficking with the Indians north of Lake Nepigon, of whom he says he had met more than fifteen hundred.‡

In 1692, Governor Frontenac sent Sieur Le Sueur to La Pointe, for the purpose of establishing a fort there. A peace had just been concluded between the Ojibways and the Sioux, and it was in the interest of the traders that this peace should not be broken. The Foxes and the Mascoutins had become hostile to the French. They sometimes barred the way to the Upper Mississippi. By the establishment of a military post at La Pointe, a way was kept open to the country of the Sioux.§

In 1695, Le Sueur, by order of Frontenac, built a fort and established a trading post above lake Pepin and below the point where the St. Croix River enters the Mississippi. There are here many islands, and the largest was selected as the site.² The object of this establishment was to interpose a barrier to the renewal of a war between the Foxes and the Sioux. "The French of Canada," says Charlevoix, "have made this post the centre of com-

* Bellin's *Remarques sur la Carte de l'Amérique Septentrionale*, pp. 123, 124. Neille's *Hist. Minnesota*, p. 139.

1 See *Procès Verbal*, by N. Perrot.

† *Archives de Paris*, 2^dme série, Vol. IV. p. 263.

‡ Denonville to Seignelay, August, 1687.

§ Neille's *Hist. Minnesota*, p. 147.

2 St. Croix River named after M. St. Croix, who was drowned here. St. Croix, in 1684, carried letters from the Governor to Du L'Hut, who was then above Lake Nepigon.

merce for the Western part, and many pass the winter here because it is a good country for hunting." ¹

On account of the complaint as to the disorders which prevailed in the western part of Canada, the authorities at Quebec had decided to abandon all the trading posts and forts west of Mackinaw, and to withdraw not only the small garrisons, but the French hunters and traders from the west. These refused to obey.

In 1698 Le Sueur obtained from the King a commission for mining upon the banks of the St. Peters River, beyond the Mississippi. At this time the war between the Sioux on the one side, and the Foxes and Miamis on the other, was renewed. These two tribes invaded the country of the Sioux. They found them entrenched and assisted by *coureurs des bois*. They were indignant, and on their return they had a skirmish with some French traders on their way to the country of the Sioux. Shortly after they met Nicholas Perrot, whom they seized, and, had it not been for the intervention of a friendly chief, would have put to death. At this time Frontenac died, and Calliers, who had, for a long time, been Governor of Montreal, succeeded him. Before news arrived of these disorders, he had granted Le Sueur leave to go to his mining district. But upon the news of these new disturbances reaching him, leave was withdrawn, and in October he wrote to Pontchartrain that he had not permitted Sieur Le Sueur to go to the River St. Peters to carry out his enterprise, although the promise had been given him for leave "to send two canoes in advance to Missillimackinac for the purpose of purchasing there some provisions and other necessities for his voyage; and also that he would be permitted to go and join them with the rest of his men early in the spring." This (Governor Calliers says) was done because certain of the French who intended returning after having disposed of their merchandise, might, upon seeing new comers arriving, think themselves at liberty to disregard the order to withdraw from that country, while if they see no new arrival, they will, in the spring, feel it necessary to obey. ²

1 "At Lake Pepin I observed the ruins of a French Factory, where it is said Captain St. Pierre resided, and carried on a very great trade with the Nadonwessies before the reduction of Canada." Carver's Travels, 1766.

2 In the year 1736 St. Pierre was the commander at Lake Pepin, P. Gingros was at the same time a missionary among the Sioux of this place. This post had been rebuilt a few years before by La Perriere, the traders having applied to the Governor for its re-establishment in 1727. The Governor of Canada says, in a despatch to the French Government:—

"The interests of religion, of the service, and of the colony, are involved in the maintenance of this establishment (on Lake Pepin), which has been the more necessary as there is no doubt but the Foxes when routed would have found an asylum among the Sioux had not the French been settled there, and the docility and the submission manifested, the attention entertained by the Sioux for the French, and the offer which the former made the latter, of which the Foxes were fully cognizant.

"It is necessary to retain the Sioux in their favourable disposition, in order to keep the Foxes in check, and counteract the measures they might take to gain over the Sioux, who will invariably reject their propositions as long as the French remain in the country, and their trading post shall continue there. . . . One trouble remains, and that is to send a commanding and sub-officer and some soldiers up there, which are absolutely necessary for the maintenance of good order at the post—the missionaries would not go up there without a commandant. This article, which regards the service, and the expense of which must be on His Majesty's account, obliges them to apply for orders. . . . They demand orders on this point as well as His Majesty's opinion as to the necessity of preserving so useful a post, and a nation which has already afforded proofs of its fidelity and attachment." P. D. 8, N. Y. Hist. Col. vol. x., pp. 1016, 1017. Archives de Paris, 1ère série, vol. viii, pp. 91, 238; 3ème série, vol. x, p. 1747.

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These facts show most conclusively that, at this time, both Frontenac, and Calliers, his successor, exercised dominion over the country which lies to the west of the Upper Mississippi, as a part of Canada.

Le Sueur returned again to France. He left France and sailed for the Mississippi; and in December, 1699, landed at Mobile, in Louisiana, with thirty workmen. D'Iberville had just been appointed Governor of this new Province. With a boat, two canoes, and nineteen men, he commenced the ascent of the Mississippi. He reached the Missouri the 13th July, 1700. He there met three Canadians, who joined him. They brought a letter from Marest, a missionary among the Sioux, of a war between them and the Sangiestos. He met, in all, ten other Canadians, who accompanied him. He passed the St. Croix River; went forty-four leagues up the St. Peter's River. He then entered the Blue Earth River. At this place, on the 3rd of October, two Canadian hunters arrived, who had been robbed by the Eastern Sioux. Here Le Sueur and his party began building a fort, which, on the 14th of October, they completed. It was afterwards known as Fort L'Hillier. Le Sueur's mining proved a failure. He returned to the Gulf after having explored the country, in February, 1702, and shortly after, along with D'Iberville, sailed for France.*

The French had also at this time a fort built about forty leagues up the St. Croix River, called Fort St. Croix. Fort Vert was built near the site of Fort L'Hillier a little later †

In November, 1705, two canoes, with several *voyageurs*, arrived from the Illinois. One of them, M. Laurain, had been up the Missouri River. He gave an account of the Indian tribes upon the Missouri, and of the Spanish settlements upon the Frontier of Mexico.

LIMITS OF LOUISIANA.

It has already been mentioned that, in the spring of 1702, Bienville sailed for France. On ship-board he wrote a memorial upon the Valley of the Mississippi. He clearly indicates his views in reference to the future government of Louisiana. He would circumscribe the limits of Canada. He says the Sioux are useless where they are; that there are about 400 men of the Assiniboines and Knisteneaux, who trade at Fort Nelson on Hudson's Bay, who may be prevented doing so. He recommends the establishment of three posts: one on the Arkansas, one on the Ohio, and one on the Missouri, with one officer and ten soldiers at each; that at these posts the French should be encouraged to settle; that they should be permitted to trade with the Indians, and encouraged to establish tanneries to prepare the buffalo and deerskins for transportation; and that no Frenchman should be allowed to join the Indians in their hunts, as it keeps them hunters, as is seen in Canada. He recommends the removal of the Indians of the Upper Mississippi to new places of abode, so as to cut off the fur trade of Western Canada, and divert it to the Gulf. He informs the Minister that "It will be absolutely necessary that the King should define the limits of this country, in relation to the Government of Canada. It is important that the *commandant* of the Mississippi should have a report of those who dwell upon the rivers that fall into the Mississippi, and principally those

* La Harpe's Historical Journal. Hist. Col. Louisiana, Part III, Memoir, M. D'Iberville, Minn. Hist. Col.
† See M. Bellin's Remarques Sur le Carte de l'Amerique Septentrionale, p. 124.

of the River Illinois. The Canadians intimate to the savages that they ought not to listen to us, but to the Governor of Canada, who always speaks to them with large presents; that the Governor of the Mississippi is mean, and never sends them anything. . . . The Illinois and the Mascoutins have detained the French canoes they find upon the Mississippi, saying that the Government of Canada have given them permission. I do not know whether this is so. It follows that we have not the liberty to send any one upon the Mississippi."*

It does not seem that D'Iberville's Patent, or Commission, named the boundaries of the country over which he was to exercise jurisdiction; but it is very obvious, that when he passed the Illinois, he entered a country which had for several years been under the Government of Canada, where forts were erected, where small garrisons were placed, and where many Canadians remained under the authority and protection of the Governor of Canada. But the authorities of Canada were not averse to the proposition of D'Iberville, that the boundary between Canada and Louisiana should be clearly defined; and when a Patent was made to Crozat in September, 1712, this was done. By this patent Crozat is empowered "to carry on exclusively the trade in all our territories by us possessed, and bounded by New Mexico, and by those of the English in Carolina; all the establishments, ports, harbours, rivers, and especially the port and harbour of Dauphin Island, formerly called the Massacre Island, and the River St. Louis, formerly called the Mississippi, from the sea shore to the Illinois,¹ together with the River St. Philip, formerly called the Missouri River, and the St. Jerome, formerly called the Wabash (Ohio), with all the countries, territories, lakes inland, and the rivers emptying directly or indirectly in that part of the River St. Louis.² All the said territories, countries, streams and islands, we will, to be, and remain comprised under the name of the Government of Louisiana, which shall be dependent on the general Government of New France, and remain subordinate to it; and we will, moreover, that all the territories which we possess on this side of the Illinois (country) be united as far as need be, to the General Government of New France, and form a part thereof, reserving to ourselves, to increase if we think proper, the extent of the Government of the said country of Louisiana."†

Here we have that clearly defined line asked for by D'Iberville—the Ohio and the Missouri are to separate the two Provinces of France from each other. All north of this separating line is to form a part of the Government of Canada; all to the south of it, the Province of Louisiana.

M. Crozat, Marquis du Chatel, surrendered his patent to Louisiana in 1717. In the month of August of that year, a company was formed in France, under the title of the Western Company, whose chief promoter was the celebrated John Law. When Crozat came into possession of Louisiana there were just twenty-eight European families; when he surrendered his patent the number had increased to seven hundred persons.

The Western, or as it is often named, Mississippi Company obtained letters patent from the King the same year that Crozat surrendered his. Article five declares that, "With a view to give the said Western Company the means of forming a firm establishment, and en-

* Minnesota Hist. Col. pp. 319, 338.

1 Not the River Illinois, but the country so called; that is, northward to the southern bank of the Ohio.

2 That is, all the country south of the Ohio and the Missouri, from New Mexico to Carolina.

† French's Hist. Col. of Louisiana, pt. 3rd, p. 39.

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abling it to execute all the speculations it may undertake, we have given, granted and conceded, do give, grant, and concede to it, by these present letters and forever, all the lands, coasts, ports, havens and islands, which compose our Province of Louisiana, in the same way and extent as we have granted them to M. Crozat, by our letters patent of 14th September, 1712.* Here we have Louisiana with the same boundary line separating it from Canada, which was laid down in 1712. Shortly after, Illinois was added, by an ordinance of the King and Council of State, to the Government of Louisiana. The following is the ordinance:—

“The King in Council, having under consideration the letters patent in form of an edict of the month of August last, establishing a commercial company under the name of the Western Company, together with those of the 14th September, 1712, granted to Sieur Crozat, and being of opinion that it would be conducive to the service of the King, and of use and advantage to the Western Company, to extend the Government of the Province of Louisiana, *by adding to it the country of the savages called the Illinois*; the report being read and everything considered, His Majesty in Council, on the advice of the Duke of Orleans, his uncle, Regent, has united and incorporated the country of the savages to the Government of the Province of Louisiana, desires and intends that the said Western Company shall enjoy the lands comprised under the said country in the same way that it ought to enjoy those granted to it by the said letters patent in the month of August last; and that the commandants, officers, soldiers, habitants, and others who are or who may be in the said country, will recognise the authority of the General in command of Louisiana, and yield obedience to him without any kind of opposition, on pain of disobedience. Done at the King's Council of State, in the presence of His Majesty, held at Paris on the twenty-seventh of September, 1717.

(Signed)

PHILIPPEAUX.

On the 19th June, 1719, the King notified the Marquis de Vaudreuil, Lieutenant-Governor of New France; le Sieur Begon, Intendant; and the officers of the Superior Council at Quebec, to read and publish the letters in form of edict of August, 1717, establishing the Western Company, and the *arrêt* of the Council of the 27th of September, 1717, incorporating the Company of the Illinois with Louisiana, and ordering them to be kept and observed according to their form and tenor, notwithstanding any edicts, declarations, *arrêts*, ordinances, rules, usage, and other things contrary thereto, from which we have derogated, and do by these presents derogate.

(Signed)

LOUIS.

By the King:

The Duke of Orleans, Regent, present.” †

In the beginning of October, 1718, M. De Boisbriant set out from Mobile to take command of the Illinois country, and in December, 1719, M. De Bienville, the Governor of Louisiana, received a letter from M. Dutisne, written at Kaskaskias the previous month, giving an account of his travels to the villages of the Missouris, the Ossages, the Panis, and the Padouchas, tribes of Indians who are marked upon the maps of the period as residing south of the Missouri river. The Ossages resided upon the river bearing their name; the Mis-

* French's Hist. Col. of Louisiana, part 3rd, p. 49.

† Edits, ordinances, &c. Jour. 1, pp. 375, 376.

souris between the Ossage and Kansas rivers, upon the south bank of the Missouri; the Panis upon the northern branch of the Kansas river; and the Padouchas upon the southern branch of the same river.

The explorations undertaken, the settlements formed, and the military and trading posts established, no less than the description given in the patents quoted, indicate the extent of country over which the local authorities of Louisiana undertook to exercise jurisdiction.*

In October, 1718, Benard de la Harpe went to Cadodouqua, on the Red River, with fifty men, with orders to establish a post there, and to ascertain the number of Indian tribes in that country. He built a fort. He visited Natchitoches, where he found a fort had been built and M. Blondel was in command. The Western Company recommended their officers to have a good understanding with the Governor of Canada in regard to their Indian wars. They ordered that the fort built by M. Boisbriant, in Illinois, should be called Fort Chartres; that at Biloxi, Fort Louis; that at Mobile, Fort Condé. The fort built by La Salle, at St. Bernard's Bay, had been destroyed by the Spaniards, as being within the limits of Mexico, and there was no successful attempt on the part of France at any subsequent time to take possession of the coast west of the Sabine River.¹

In 1723, the Company of the Indies succeeded the Western Company in the possession of the government of Louisiana, and they governed it until 1732, when it was again surrendered to the Crown of France, and was again made "dependent on the general government of New France, as it was previous to the grant to the Company."¹ They divided the Province into nine civil and military districts. These districts were: Alibamons, Mobile, Biloxi, Natchez, New Orleans, Yazoo, Illinois, Arkansas, and Natchitoches. Each of these districts was protected by a fort, and was under the jurisdiction of a Commandant and Judge, who administered its civil and military affairs. The Judge administered justice according to the custom of Paris, which was declared to be the law of the Province.†

It will be observed that all these districts except Illinois lie to the south of the Ohio and Missouri rivers. Illinois, the country occupied by the Indians of that name,—as will be seen from the arrêt of the Council of September, 1717, in which it is spoken of as "the country of the savages called the Illinois"—embraced the country between the Illinois and the Wabash rivers. That the country east of the Wabash was regarded as a part of Canada, is shown by

* Bernard de la Harpe's Historical Journal.

† French's *His. Col. Louisiana*, Part III. p. 84.

¹ Louis XV. to MM. de Beauharnois and Hocquart, Governor and Intendent of Canada. Marley, May 8th, 1731.

"They are to be informed that His Majesty has accepted the surrender of the Province of Louisiana and the Illinois country from the India Company, to date from the 1st of July next. They will find hereto annexed, copies of the arrêt issued on the subject. That Province will in future be dependent upon the General Government of New France, as it was previous to the grant to the Company. His Majesty has not yet determined whether the Illinois country is to remain dependent upon the Government of Louisiana. That may, nevertheless, be more convenient, as the Governor-General will always be equally able to send his orders to it, and to be informed of what occurs there in regard to the Indians. MM. de Beauharnois and Hocquart will examine whether it be proper to leave this country in its present state, or to disconnect it from the Government of Louisiana, as was the case before it had been granted to the Company. They will be careful to report on that point, and state the reasons for and against, whereupon His Majesty will communicate his intentions." Archives de Paris, 1ère série, vol. viii, p. 128.

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the fact that the French post on the left bank of that river was included in the Capitulation of the Marquis of Vaudreuil, as being within the limits of Canada, while those of the Illinois country were not. So much of the territory then claimed by France, as was not expressly included within the boundaries of Louisiana, remained a part of Canada.

It is no doubt true that other boundaries than those mentioned, have been given by geographers who have looked rather at the physical features of the country possessed by France in North America, than to those public acts of the King and his Ministers, by which the limits of Canada and Louisiana were legally determined. Thus the boundary as laid down on the map of Franquelin, made in 1684, runs along the height of land south of Lake Erie, and thence follows the heads of streams flowing into Lake Michigan. It then runs north-west and is lost in the country of the Assinipoelles. It seems to have been founded upon the *Procès Verbal* by which La Salle took possession of the Mississippi Valley. The map of Coronelli, published in 1688, lays down the whole as Canada, or La Nouvelle France. Delisle's map of 1739 embraced, in Canada, the country north of the Ohio and the Missouri, John Senex's map of 1710 takes into Canada a large part of the country south of the Ohio, and west of the Alleghany Mountains; but the boundaries on all these must give place to those indicated by the King's instructions, by Acts of Governmental authority, and by the King's Patents already alluded to.

EXTENT OF CANADA.

Besides the explorations and acts of taking formal possession of the country which are mentioned above, the French had, during the second half of the seventeenth century, explored the country from the St. Lawrence and its lakes to Hudson's Bay. They claimed that the Hudson's Bay was within the limits of New France. What were the intrinsic merits of the respective claims of England and France upon the northern border of Canada, will be considered hereafter.

The western extension of French authority has now been given up to the period when the war of the Spanish Succession began, and which war was closed by the Treaty of Utrecht in 1713.

It was argued by the English that, as the Treaty of Utrecht provided for the appointment of Commissaries both by England and France, for the purpose of settling the disputed boundaries between their respective possessions, and as this treaty was again renewed by that of Aix la Chapelle, no acquisitions subsequently made by France by military occupation or actual settlement could improve or strengthen her right to any portion of the continent which was claimed both by England and France. These observations point more particularly to the occupation of western New York, and the upper part of the valley of the Ohio, which will be considered at a later period. The progress will now be shown of French discoveries and colonization, within the territories France had before occupied, and also her discoveries to the west and the north-west, where the country was unknown to the English, and where no complaint was ever made of French aggression.

At Detroit, Sandusky, St. Joseph's, Michilimackinac, Baye des Puans, Prairie du Chien, Vincennes, Ouatanon, at various points in the Illinois country, French settlements were formed before 1730; and at most of these before 1713.

In 1716, MM. de Vaudreuil and Begon addressed the French Government in favour of extending their explorations westward to the Pacific ocean.*

In the following year the Government of France approved of the plan. M. de Vaudreuil was instructed to establish these posts; but he was required to do so without any expense to the King. This had been done by La Salle during his travels of discovery. The policy was still adhered to, as it was thought that those who founded them would be sufficiently indemnified by a monopoly, for a time, of the Indian trade. In 1717 M. de Vaudreuil caused Sieur de la Noüe, to set out with eight cannons to prosecute this scheme of discovery. He instructed Lieutenant de la Noüe "to establish the first post at the River Kanastigoya, (Kaministiquia) to the north of Lake Superior, where a fort had been many years before erected by Du L'Hut, after which he was to go to Lake Takanamiononis (Rainy Lake), to establish a second post, and to acquire through the Indians the information necessary for the establishment of a third post at the Lake of the Assenipoles. It seems that Lieutenant Robert de la Noüe was furnished with fifty voyageurs, eight of whom were to be left at each of the posts to be established, and twenty-six others were to prosecute the discoveries from Lake Winnipeg, westward to the Pacific Ocean.¹

In 1719, Vaudreuil writes a letter to the Minister, informing him that he had not in this year received a letter of Lieutenant Sieur La Noüe; that he had sent Sieur Pachot to the country of the Sioux, to make peace between this nation and the Cristineaux; that Sieur Pachot had not yet returned to Chagoamigon (La Pointe) at the time the last canoes had left there, and that he had not been informed of the success of his voyage; that he supposed Sieur de la Noüe was waiting for the return of Sieur Pachot to render an account to the Governor of what he had done in the execution of the orders of which he had charge, and which then he would not be able to do when Sieur Pachot shall arrive at Kaministiquia, as the season will have been too far advanced. The Governor of Vaudreuil expresses the opinion that the absence of Pachot will prevent La Noüe from going this year to Rainy Lake, but that that officer will find means to bring to his post the savages who are accustomed to go and trade at Hudson's Bay.† Nothing of a later date has been found in reference to La Noüe's enterprise.

* Archives de Paris, 36in série, vol vi, pp. 529, 530.

1 *Conseil de Marine*, 7th December, 1717. Messieurs de Vaudreuil and Begon having written last year, that the discovery of the Western Sea would be advantageous to the Colony, it was approved that to reach it, M. de Vaudreuil should establish three posts, which he had proposed, and he was instructed at the same time to have the same established without any expense accruing to the King—as the person establishing them would be indemnified by the commerce—and to send a detailed schedule of the cost of continuing the discovery. In reply it is stated, that M. de Vaudreuil, in the month of July last, caused Sieur de la Noüe, Lieutenant, to set out with eight cannon to carry out this scheme of discovery. He gave him instructions to establish the first post at the River Kanastigouya, to the north of Lake Superior, after which he is to go to Takanamiononis (Rainy Lake), near the Christianaux Lake, to establish a second post, and to acquire through the Indians the information necessary for the establishment of a third post at the Lake of the Assenipoelles. This journey costs the King nothing, because those engaged in it will be remunerated for their outlay by the trade which they will engage in; but to follow up the discovery it is absolutely necessary that His Majesty should bear the expense, because the person employed in it will have to give up all idea of trade. They estimate that 50 good voyageurs will be required; of these 24 will occupy the three posts, and 26 others will be engaged in making the discovery from the Lake of Assenipoelles to the Western Sea.—Paris Archives, 3ème série, vol. vi.

† Archives de Paris, 3ème série, vol. viii., p. 646.

It would seem from Vaudreuil's letter that La Noüe had already established a post at Rainy Lake, and that he was waiting the return of Sieur Pachot before setting out on his journey to his own establishment.

The next expedition of which an authentic account is to be found is that of M. Verendrye. The account of the explorations of M. Varennes de la Verendrye are unquestionably authentic. They are taken from the unpublished memoirs and letters of Verendrye and others which are among the Marine Archives at Paris, the substance of which were published by Pierre Margry, the keeper of those archives, in the *Moniteur*, during the autumn of 1852. From these articles, it appears that, in 1728, M. de la Verendrye, who was then in command at Lake Nepigon, having received, from various sources, accounts of the existence of a river running toward the west, believed that it would lead to the discovery of the Pacific Ocean. He secured the services of a trusty and courageous Indian guide, well qualified for leading a convoy. M. de la Verendrye went down to Quebec in order to discuss with the Governor this project of exploring at first the River Assiniboine and afterwards the river situated towards Lake Winnipeg, which was supposed to be about 500 leagues from Kamanistiquia, thinking that, from the height of land, he would find a river that would lead him to the sea. The Governor at once comprehended the importance of such an exploration, and favourably received the proposals of M. de la Verendrye. M. de Beauharnois having examined with the Engineer, Chaussegros de Lery, the map sent by the Indian Ochagach, selected by M. de la Verendrye as his guide, thought, as well as the Engineer, that New France being crossed by two great rivers which take their rise toward the centre, one of which runs to the east, and the other, the Mississippi, runs toward the south, that there could not be a region more than 700 or 800 leagues wide, to the west, without being also crossed by a great river. The Marquis de Beauharnois after having examined the chances and difficulties of such an enterprise, thought proper, before traversing such vast and unknown regions, that M. de la Verendrye should himself see how the matter stood, and should establish at any rate a post in the country beyond the regions hitherto explored. This, it was hoped, would enable him, in his subsequent explorations, to go forward with less difficulty on account of the intercourse he might have with the Indians. The Governor undoubtedly hoped, that being once in a position to speak with a better knowledge of the facts, he would obtain from the King adequate protection for those who would devote themselves to the enterprise. M. de Beauharnois, acting upon this impression, instructed M. de la Verendrye to go forward and establish a post at Lake Winnipeg, taking with him 50 men and a missionary; and he gave him the benefits and privileges of the fur trade, to enable him to overcome the difficulties of this establishment. Impatient to commence, M. de la Verendrye, by a compact signed 13th May, 1731, in the presence of the Governor of Montreal, associated himself with some men who made the necessary advances of merchandise and equipments, and after having reached Michillimackinac, where he took with him Father Messenger as a missionary, he arrived on the 16th of August at the grand portage of Lake Superior, 50 leagues to the south-south-west of Kamanistiquia.

M. de la Verendrye did not fail to perceive the dangers and expenses connected with such a discovery. This did not, however, hinder him from again offering his services as well as those of his nephew, and three sons, to the Minister in order to commence his explorations. Two years after the departure of M. de la Verendrye, 10th October, 1733, the Governor and

the Intendant (Hocquart), wrote to M. de Maurepas that M. de la Jemerays, nephew of M. de la Verendrye, had represented to them that His Majesty would bear the necessary expenditure; that the Western Sea could easily be discovered, as they were at Lake Winnipeg; but that for them and their associates they were unable to bear the expenditure, having lost already 43,000 francs; that the voyageurs refused to go forward, if the wages already due them were not paid; and that their creditors declined to make the necessary advances, without which, they could not continue their journey. They informed the Minister that an expenditure of 30,000 francs, with the supplies which could be taken from the Royal Stores, would meet the expenditure for three years' explorations. They say that in virtue of the compact requiring Verendrye to establish a post beyond the limits hitherto known, they cannot compel him and his party to go further than Lake Winnipeg, which is more remote than was at first believed. The response of the French Court was, that it was not proper for the King to incur the expenditure suggested; and that those who were at the head of the enterprise ought to be in a position to continue it through the profits of the fur trade. Almost the same answer was again given on the 12th of April, 1735. The die was cast. M. de la Verendrye had now either to abandon his projected discoveries, or to pursue them at his own risk and peril, without other means than the privilege of the trade. In this alternative he chose that part which braves dangers and imposes sacrifices. He was still in debt for his first equipment; and he incurred additional obligations for the second. He had in his employment, already, his nephew and his three sons. He prepared his fourth, who was then 18 years of age, to accompany his brothers the following year, by putting him to the study of land-surveying and map-drawing, that he might be the better fitted for assisting him in the enterprise in which he had embarked, and in which, in spite of numerous obstacles, he, by an undaunted energy, obtained sufficient success to win for himself, as geographical discoverer, an enduring renown.

The Governor, seeing Verendrye overwhelmed with financial difficulties, gave him leave in the year 1735 to farm to the traders, for three years, the posts which he had established; but he was not to trade at these posts, and he was to devote all his attention to his projected discoveries. This was done, but it seldom furnished him with means adequate to his requirements. He considered himself happy when he had not to endure the most cruel privations.

After twelve years of disheartening difficulties and sacrifices, M. de la Verendrye had succeeded in exploring only the country between Lake Winnipeg and the Rocky Mountains, and from the sources of the Yellowstone River to the north branch of the Saskatchewan.

If we follow M. de la Verendrye in his discoveries after he reached Kaministiquia in 1731, where Lieutenant Robertel de la Noüe had in 1717, for a second time, established a fort, we shall see that his party pressed forward that same year to Rainy Lake, where they built Fort St. Pierre at its outlet. They then crossed Lake of the Woods, and built on one of its shores, in 1732, Fort St. Charles; then going through Lake Winnipeg, they established a fort five leagues up one of its rivers. They then crossed River Winnipeg, which they called River Maurepas, and they erected there a fort in 1734, named Fort Maurepas. Upon the River Assiniboine, then called the St. Charles, they built Fort la Reine the 3rd of October, 1738. This was a kind of advanced post. The River St. Pierre, an affluent of the Assiniboine, was the centre of the trading establishments and the point of departure for the expeditions which the discoverers were to undertake to the North and to the South. It

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is by this river that they descended to the country of the Mandans. In 1742 they turned to the Upper Missouri, and thence ascending it as far as the Yellowstone, they traversed the country of the Snake Indians. After exploring the country to the northward,—the date of which explorations cannot be accurately fixed,—they crossed Lake Dauphin, or Manitoba, and the Lake of Swans, explored the River des Biches, and ascended the Saskatchewan, which they named Poskoiaic, as far as its forks. They built two forts in these countries—the one at Lake Dauphin, the other on the River des Biches, which was called Fort Bourbon.

In 1736, one of the sons of Verendrye with all his party, consisting of twenty-one men, were massacred on an island in Lake of the Woods. A party of five Canadian voyageurs, who came upon their bodies some days after, saw, lying upon robes of beaver, the heads of Frenchmen, the most of which had been scalped. The Missionary, Father Anneau, who was one of the company, had one knee upon the ground, an arrow in his head, his breast open, his left hand upon the ground, his right hand up. Le Sieur de la Verendrye was lying upon his stomach, the back carved to bits with a knife, a spade was forced into his loins; the body was headless, and ornamented with garters and bracelets of porcupine quills. The elder Verendrye was, at the same time, in great destitution at Fort St. Charles, and he learned then, too, of the death of M. la Jemerays his nephew. Had it been possible to remedy such a loss, the courage and the ardour of his remaining sons would have done it. But the numbers of the expeditionary force were now so much reduced, that their weakness retarded their operations.

It was in 1743 that the eldest son of Verendrye and his brother explored the country to the Rocky Mountains. This expedition lasted from the 29th of April, 1742, to the 2nd of July of the following year, when they reached Fort Charles the point from which they had set out. In this expedition there were but four men, who traversed the country. Sixty years before it was visited by Lewis and Clark. They reached the Rocky Mountains through the valley of the Yellowstone River. They came in sight of these mountains on the first of January, 1743. Twelve days later they reached their base, and were preparing to ascend them. They hoped from their summits to behold the western sea, but a large number of the Indians who accompanied them were going upon an expedition against the Snake tribe. Finding, however, the lodges of this tribe deserted, and fearing that their enemies had gone to attack their own villages in their absence, they at once resolved to return. The Chief of the Bow Indians endeavoured to dissuade them, but to no purpose; and the Chevalier de la Verendrye and his party were obliged to return with them. On their return they took possession of the country of the Upper Missouri, on 19th of March, 1743. They buried, for that purpose, on a hill near their fort, a plate of lead engraved with the King's Arms. To commemorate their journey they elevated a pyramid of stones *in the name of the Governor of Canada*. Although they had not discovered the western sea, they did establish the title of the King of France upon the Upper Missouri, and extended the limits of Canada to the Rocky Mountains. This success, however, satisfied neither Verendrye nor his sons, because they feared to meet, through a route so far to the south, the Spanish posts without resolving the problem of the Western Sea. On this account, they decided to turn their course towards the north, where they discovered the Saskatchewan River five years later.

M. de la Verendrye prepared to send his sons towards the north, but the conduct of the Government, which refused him every promotion, disgusted him. He believed himself to be the victim of systematic injustice. The Government, however, had been misled in refe-

rence to his discoveries. At the very time that the discoverers were worn down with excessive fatigue and embarrassed by large debts, they were represented to the Government as being mainly engaged in finding out the resorts of the beaver in that far-off region. In 1743, Verendrye returned to Quebec. He surrendered his Commission to the Government, in order that they might bestow it on those whom they believed to be more deserving of their favours. He was conscious of having done all in his power in the service of the King and for the good of the colony. He declared that the only personal advantage he had derived was a debt of 40,000 francs.

After frequent remonstrances by the Marquis de Beauharnois, as to the injustice done Verendrye, he succeeded in securing his promotion to the rank of Captain, and Verendrye again entered the services of the Government as an explorer. In 1748, he had already left Quebec to continue his discoveries in the West. He had ascended the Saskatchewan to the forks, a place of resort every spring of the Christinaux. He learned while there that the river rose a long distance to the west, among lofty mountains; that a great lake lay beyond those mountains, the waters of which were unfit to drink. He was informed of all the movements of his sons, and was preparing himself, old as he was, to leave Montreal in the month of May, 1750, at a time when the navigation would be open in the upper country. He intended going with his sons to Poskoyac River; he purposed to build there a good fort. From this place they were to set out the following spring, to explore the mountains and to visit the great lake beyond. He purposed to proceed with all possible celerity, in order to winter at Fort Bourbon, but he did not live to again visit the North-West. His sons were denied the privilege of continuing the discovery. Beauharnois had left the country in 1746, and his able and enterprising successor, M. de la Galissonniere,¹ had been recalled to act as a commissioner for the settlement of the disputed boundaries between the possessions of France and England in America. The Intendant Bigot having a partnership with M. de la Jonquiere in reference to these discoveries, and the trade of the western posts, the Verendryes were forced to yield to their more powerful competitors. The honour of continuing the work of explorations was entrusted to two officers, M. Lamargue de Marin, who went towards the Missouri, and Jaques Legardeur de Saint Pierre, who went towards the north. The party of Saint Pierre went along the Saskatchewan, according to the design of Verendrye, and built Fort Jonquiere at the base of the Rocky Mountains. The Christinaux burnt down Fort La Reine and were near massacring Saint Pierre. His Lieutenant, Boucher de Niverville, was ill. Saint Pierre had set aside the urgent demand of the Verendryes to accompany him instead of De Niverville. De Niverville was dispatched by Saint Pierre to establish a post near the mouth of the Saskatchewan; but he was obliged to stop on his way exhausted with the fatigues and privations to which the Verendryes had long been accustomed. A few of his men only succeeded in reaching the Rocky Mountains in 1752. The expedition does not seem to have crossed the Mountains. M. de Saint Pierre was recalled by the Marquis Du Quesne, who had succeeded M. de la Jonquiere as Governor. M. de la Corne was placed by the new Governor in command of the posts of the West.

Louis Anquetin de La Riviere wrote a memoir on the state of Canada in 1757, during

¹ Governor *ad interim*, M. de la Jonquiere having been appointed Governor in 1746, but he did not enter upon his duties for more than two years.

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the period of the seven years' war.* Under the designation of *La Mer d'Ouest*, he writes as follows:—" *La Mer d'Ouest is a post* that includes the Forts St. Pierre, St. Charles, Bourbon, de la Reine, Dauphin, Poskoyac, and des Praires, all of which are built with Palisades that can give protection only against Indians." Fort Saint Pierre he describes as situated on Rainy Lake at five hundred leagues from Michillimackinac, and three hundred from Kaministiquoya to the north-east of Lake Superior. Fort St. Charles is situated sixty leagues from Fort St. Pierre, on a peninsula that goes far into Lake of the Woods. Fort Bourbon is 150 leagues from Fort Charles, at the entrance of Poskoyac into Lake Winnipeg. Fort La Reine is situated on the right bank of the Assiniboine River, sixty leagues from Fort Bourbon. The route we are told to take in order to go through the upper part of the Missouri country is the Assiniboine River. Fort Dauphin, at the distance of eighty leagues from Fort La Reine, is on Troubled Water River. Fort Poskoyac is built on the river of that name, at 180 leagues from the preceding one. It takes ten days to reach Nelson River from this fort. The Fort of the Prairies is eighty leagues from Fort Poskoyac in the upper part of the river of that name. This post is farmed for the annual sum of 8,000 francs. The commanding officer is its farmer. He has a fourth interest in its trade. This post, says Bougainville, produces yearly from 300 to 400 bundles of furs. It is called "the Sea of the West," embracing as it did the whole country from Rainy Lake to the Rocky Mountains, and from the North Saskatchewan to the Missouri, was in the gift of the Governor-General of Canada, and was bestowed by him upon his favourites in a manner described by General Montcalm in his letters to Marshal Belleisle. At least two other forts were built by the French in that distant country, Fort Nepaween and Fort La Corne, both of which stood near the forks of the Saskatchewan; but no mention is made of them in Bougainville's Memoirs. Of the seven forts about which he writes, and which are situated within the limits of the "post of the Western Sea," he says each was entrusted to the care of one or two officers, seven or eight privates, and eighty Canadian *engagés*. This would make the population of this western post upwards of 700 Frenchmen in the year 1757. In this estimate are not taken into account the numerous *couvreurs des bois* who paid little regard to the exclusive privileges of the fur trade granted by the Canadian authorities, and who, as they usually sold their peltries to the farmers of the posts, were scarcely less profitable to them than the Indians themselves.

It is evident from the Memoir of Bougainville, who, at the time of writing was an Aide-de-Camp of General Montcalm, and who, therefore, had every opportunity to obtain authentic information, that the garrisons remained at the posts as long as the country was in the possession of France. When Major Rogers went to Detroit to accept the surrender, in accordance with the capitulation of the Marquis de Vaudreuil, he found Captain Beletre commandant there. He left Detroit shortly after to accept the surrender of Michillimackinac, to relieve the French garrison at that point. The storms and gathering ice of Lake Huron compelled him to return, so that the western forts upon the lake remained in the hands of the French until the following year. Lieutenant Gorell describes the taking possession of those western forts, but he makes no allusion to the French garrisons by which they were held.

* See extracts from M. de Bougainville's Memoir of the trading posts.

He tells us in his journal, that Lieutenant Leslie of the 60th regiment with one sergeant, one corporal, one drummer, and 25 privates of the same regiment, were left at Michillimackinac, and that he was left with one sergeant, one corporal, and 15 privates at Green Bay. He says that he found the fort quite rotten; the stockade ready to fall; the houses without roofs, and fire wood far off, and none to be had when the river closed. He makes no mention of any French officer or garrison being there, although it is certain that Lieutenant Coutral had held this place not long before. The post of Ouiatanon on the Wabash, was surrendered by Ensign Bayeul to Lieutenant Jenkins, who took possession with fifteen men. Ensign Paully was made Commandant at Fort Sandusky; Ensign Schlosser at Fort Saint Joseph, at the south eastern entrance of Michigan; Ensign Holmes at Fort Miamis. Although these forts were held by small garrisons of French troops up to the last, some of them seemed to have been withdrawn to the Mississippi before the English garrisons reached them.

Montcalm complains of the incapacity of Vaudreuil, and the corruption of Bigot, the Intendant. He declares that Bigot is engaged only in amassing a fortune for himself, his adherents, and sycophants; that cupidity has seized officers and storekeepers; that the Commissaries on the Ohio, and with the Indians of the upper country, are amassing astonishing fortunes; that if a fourth of what is supposed to be expended for the Indians, had been expended for them, the King would have had them all, and the English would have had none; that Forts Niagara and Machault had been lost *because they had been stripped of 400 of their best men for the sake of the fur trade.** And M. Bougainville observes that the post of La Baye (Green Bay) had given in three years to MM. Rigaud and Marin, 312,000 francs; and that at the time of M. Marin, who was associated with MM. de la Jonquiere and Bigot, the Governor and Intendant, it produced 150,000 francs per annum, besides paying all expenses. General Montcalm does not hesitate to say in his letters to the Minister of War, that the officials of France in Canada seem intent only on amassing a fortune, and are indifferent to the fate of the Province.

These facts are mentioned for the purpose of showing that those distant regions explored by the Verandryes, by La Noüe, Saint Pierre, de Niverville, Pachot, Golor, Guingas and de Montbrun, were actually occupied by the French merchants, traders, and soldiers, from the period of their discovery as a part of Canada, and subject to the authority of its Government, until the period of its conquest. It will hereafter be shown, that so much of this territory as lies north of the parallel of the sources of the Mississippi, as far as the Rocky Mountains, was ceded by France as a part of Canada.

The brief abstract of French explorations which has been given, will show the extent of territory embraced within the limits of Canada and Louisiana respectively.

It is now proposed to point out what portions of this territory were claimed by the Government of Great Britain as the rightful possession of the British Crown.

DISPUTED TERRITORIES.

The territory east of the New England States, and south of the lower St. Lawrence, was claimed by England under the twelfth Article of the Treaty of Utrecht, as a part of

* N. Y., Hist. Doc. Vol. IX.

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Acadia, but this claim was strenuously resisted by France. The country west of Lake Champlain to the Niagara river, and north to the St. Lawrence was also claimed by both England and France.

Verazzano, under a Commission from Francis I., coasting northward from the Carolinas, discovered the Bay of New York, in July, 1524; but no colonies were established by France upon that part of the Atlantic coast. The same waters were visited by the Dutch, under Captain Hudson, in 1609.* The Dutch took possession of the country from the Delaware Bay to the borders of New Plymouth. They called it New Netherlands. They established colonies and settlements at Manhattan, in 1613. They founded the settlement at Orange (Albany), in 1614, and at various other points between Orange and Manhattan, at later periods. The Duke of York obtained a Patent in 1664, when he took possession of the country by force of arms. The United Provinces of the Netherlands relinquished their claim to the King of England, by the Treaty of Westminster, in 1674.† It has already been stated that a considerable portion of northern New York, and the whole of the western part of the State, was claimed by the French Monarch as a part of Canada. The emissaries of the Duke of York had taken forcible possession of the country, on the ground that the Dutch were encroaching on the English possessions, although Manhattan was established seven years before New Plymouth, and seventeen years before the colony of New Boston.‡ The Duke of York's Secretary, Mr. Werdan, wrote to the Governor of the Duke's Province, that he regarded its boundary "as extending northward as far as the lake or river of Canada, and that the French have no colour to pretend right of conquest from any of their invasions there *unless they had such possession before the Dutch were settled in Albany*, which I believe is not so."§ But the French authorities insisted that the expeditions of Champlain, Courcelles, and Tracy, the submission of the Indians, and the settlement of the Missionaries gave the sovereignty of the country to France.|| It did seem rather strange, that the Dutch should have been attacked by a naval expedition for having established a colony upon English territory, a half century after the colonization of the country was begun, and that after Holland had surrendered the country to England, the occupation of the country by Holland should be made the basis of the Duke's title as against France.¶

The Lords of Trade and Plantations frequently protested against the encroachments of France in Acadia, upon the south shore of the St. Lawrence, and in the valley of the Ohio.² But the French rested their claim to the disputed territories upon prior discovery

* N. Y. Hist. Soc. Col. Vol. I., pp. 102-146.

† Brodhead's Hist. New York, Vol. I., and Vol. II., chs. 1, 2, 3, 4, 5, and 6.

‡ Brodhead's Hist. of New York, Vol. II.

§ Brodhead's Hist. New York, Vol. II., p. 306; Chalmers An. pp. 568-572.

|| Archives de Paris, 1ère Série Vol. I., p. 98. Brodhead's Hist. N. Y., p. 102, et seq. N. Y., Col. Doc. Vol. III., pp. 121-125. Vol. IX. pp. 37, 38; Faillon, Vol. III., p. 134.

1. See the Marquis de Denonville's Memoir, in which the claims of France to what is now Northern New York are fully set forth.

¶ N. Y., Hist. Doc. Vol. III., pp. 233, 237, 247; Vol. V., p. 531; Vol. IX., p. 305.

2. "The French nation having always been desirous to extend their dominion in America, have lost no opportunity of encroaching upon their neighbours there. And although your Majesty and Your Royal Ancestors have an uncontestable right, as well by discovery as by possession, to the several British

and occupation, and upon the construction they gave to the Treaties of Ryswick, Utrecht, and Aix-la-Chapelle.* The Treaty of Aix-la-Chapelle was exceedingly vague. The southern boundary of Canada was, previous to the war of 1742, a matter of dispute, and the Treaty, which was concluded six years later, left that boundary, throughout its entire length, determined only by the very vague agreement that it should continue to be, when peace was restored, what it had been before the war began.†

The English now rested their claim to the disputed territory upon the 12th and 15th Articles of the Treaty of Utrecht, to prior occupation of the sea coast in the same latitude, and to the cession of Indian rights to a wide stretch of territory by the Indians themselves.‡

The charters granted by the kings of England to all the old colonies, extended their grants in express terms westward to the South Sea. These pretensions, though never formally relinquished, were never put forward as conclusive evidence of the right of sovereignty; though they were sometimes referred to as *prima facie* evidence of prior discovery or occupation. It would indeed be difficult, upon any principle of natural justice or of public law, to show how a settlement of a few colonists upon the Chesapeake Bay and James River, could confer the sovereignty of a continent between certain parallels of latitude, stretching across wide rivers and lofty mountains, upon the sovereign who professed to grant the charter, so as to exclude the inhabitants of other countries from rightfully settling within the prescribed limits.§

The English colonies were agricultural communities. They formed continuous settle-

Colonies in America; yet the French Kings have at sundry times made grants thereof to their subjects. Such were the Letters Patent of Louis XIII., in favour of the French West India Company, bearing date the 29th of April, 1627; and those of Louis XIV., to Monsieur Croiset, sometime since surrendered to the United India Company of France, upon which they build their title to the Mississippi. Many other instances of like nature might be given, were they necessary to the present purpose; but these two which comprehend almost all Your Majesty's dominions in America, may be sufficient to show the unlimited inclination the French have to encroach upon Your Majesty's territories in those parts." Lords of Trade and Plantations, 8th Sept., 1721, N. Y. Hist. Doc. Vol. V., p. 619.

* See Memoir by the Marquis De Denonville to Marquis Seignelay, 8th Nov. 1686. N. Y. Hist. Doc. Vol. IX., pp. 303-305; Archives de Paris, Tère Série, Vol. IV., p. 1.

† Treaty of Aix-la-Chapelle, 1748. "Article V. All the conquests that have been made since the commencement of the [present] war, or which, since the conclusion of the preliminary articles, signed the 30th of April last, may have been or shall be made either in Europe, or the East and West Indies, or in any other part of the world whatsoever, being to be restored without exception, in conformity to what was stipulated by the said preliminary articles, and by the declarations since signed, the high contracting parties engage to give orders immediately for proceeding to that restitution.....the said parties solemnly renouncing, as well for themselves as their heirs and successors, all rights and claims, by what title or pretence soever, to all the States, countries, and places that they respectively engage to restore or yield....."

‡ See Entick's History of the Seven Years War, Vol. I., pp. 1-108; English MSS. Vol. I., p. 331.

§ Report of the Board of Trade to the Queen, 2nd June, 1709, Eng. MSS., vol. III., pp. 362, 363; Lords of Trade to Governor Burnet, 6th June, 1722 (Ibid.), p. 473; Burnet to the Duke of Newcastle, 9th Aug., 1724, pp. 511, 527, 531; vol. IV., pp. 1, 3, 7, 17, 21, 22, 25, 45, 47, 74, 81, 92, 117-149, 153; Circular by Lord Holderness, p. 399.

§ See grant to the Duke of Lennox and others, of all North America between 40° and 48° of north latitude from sea to sea, by James I., 1620; also Earl Warwick's Patent from Plymouth Council, 1630. Grant to Lord Clarendon by Charles II., 1663, N. S. between 31° and 36° north latitude from sea to sea,—the Carolinas. Grant by George II. to Lord Percival and twenty others, extending from the Savannah and Altamaha to the South Sea.

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ments. They had not, therefore, spread themselves over so vast an extent of territory as had the colonists of France. With the exception of a few Indian traders upon the border, they had not explored the country except where they purposed to colonize it. They were not, however, willing that their opportunity for a much wider expansion should be forever lost by France possessing herself of the whole country beyond the summit of the Alleghanies. The Iroquois claimed the entire country from Lake Champlain and the Ottawa River on the east, to the Mississippi on the west; and from the sources of the Susquehanna to the north shore of Lake Huron. Their conquests in Canada and to west of the Ohio, were made after they had received firearms from the Dutch. The French had become possessed of the countries which the Indians claimed by right of conquest, before these conquests were made. In 1684, the Iroquois made a deed of sale to the British authorities at Albany, of all the country from the Illinois river eastward into Canada. But at this time the French had built a fort at Frontenac. La Salle had erected a small fort at Niagara. Forts and trading posts were established at Michillimackinac, at Green Bay, St. Josephs, and in the Illinois. The valley of the Ohio had been discovered fifteen years prior to this period, and the Mississippi had been taken possession of from its source to the Gulf of Mexico.* The Iroquois Indians had been overawed by the building of Fort Frontenac, and were anxious for an English alliance.

It does not seem that the Indians understood the Treaty in the same sense as the English.† When the war of the Spanish Succession began, the chiefs of the Mohawks and the Oneidas came to Albany, and the English commissioners at this time could produce no treaty, but they had made mention in their books of entry that these two of the confederate tribes had placed their hunting-grounds under the protection of the English. No sooner was this done than they claimed that their hunting-grounds extended to Lake Nipissing.‡ The Indians no doubt hoped for aid in the destruction of Fort Frontenac. They wished to bring the northern Indians into subjection, and to secure to themselves the northern fur trade. Upon this promise to protect the Iroquois hunting-grounds, on some old English maps, such as Jeffery's and Peter Bell's, the whole of Upper Canada south of Lake Nipissing is marked as a British possession, although it does not appear that the sovereignty of France was ever called in question by Great Britain.§ Of the Treaty of 1701 no record seems to have been preserved, and in 1726 Governor Burnet made a treaty at Albany with the Iroquois nations, obtaining a grant north o. Lakes Erie and Ontario, and on the south of these lakes a strip of country sixty miles wide, extending from Oswego to the Cuyahoga River, where Cleveland now stands. But France had not renounced her sovereignty over the country, and the rights of England under the Treaty of Utrecht could not be enlarged at the expense of France by any arrangement entered into with the savages thirteen years later.||

* Tonty's Memoir. Archives de Paris, 1ère Série, vol. I., pp. 247, 262; vol. II., pp. 4, 9, 305, 317, 350; vol. III., pp. 263, 448; vol. IV., p. 179. N. Y. Hist. Doc., vol. IX., pp. 91, 98-103; vol. X., p. 349. Parkman's Discoveries of the Great West.

† Posts Journals; Albach's Annals; N. Y. Hist. Doc., vol. .

‡ Bancroft's Hist. U. S., vol. III.

§ See also the map in Entick's History, vol. I, p. 166.

|| English MSS., vol III, p. 515-535; N. Y. Hist. Doc., vol. . Archives de Paris, 1ère série, Vol VII, pp. 204, 209, 250, 396, 411, 415.421.

By the 15th Article of the Treaty of Utrecht, it is agreed that "The subjects of France and others inhabiting Canada shall in future give no hindrance or molestation to the five nations or cantons of Indians subject to the dominion of Great Britain, nor to the other natives of America who are in friendly alliance with them. In like manner the subjects of Great Britain shall behave themselves peaceably towards the Americans who are subjects or friends of France; and they shall enjoy on both sides full liberty of resort for the purposes of trade. Also the natives of these countries shall, with equal freedom, resort as they please to the British and French colonies for promoting trade on one side and the other without any molestation or hindrance on the part either of British or French subjects, but who are, and who ought to be, accounted subjects and friends of Britain or of France is a matter to be accurately and distinctly settled by the Commissioners."

Frequent correspondence took place both in Europe and America, between the English and French authorities, in reference to the true construction of this Article.* The English maintained two propositions, neither of which seems tenable. They held that the French Government had by this Article acknowledged the Five Nations as British subjects, and therefore their territory as a British possession. This the French Government denied. They pointed to the fact that many of them lived in the vicinity of Montreal, and had always acknowledged the sovereignty of France, and claimed the protection of her Government; that others lived in sections of country which France claimed as a part of her North American dominions; that this Article of the Treaty expressly provided that what Indians were to be accounted subjects and friends of the one nation, and the other was to be settled by Commissioners. The English Government further claimed, that it gave both to the Indians and the colonists within the dominions of the King of England, the right to go into the territories of France for the purpose of trading with the Indians there. This, also, was denied by the French authorities. They contended that the Indians alone are to be untrammelled by the political divisions of the continent between France and England. The Article provides that the subjects of France are to neither hinder nor molest the five nations subject to the dominion of Great Britain, nor the natives of America who are in friendly alliance with them. A reciprocal obligation is imposed upon the subjects of Great Britain. So far, the Article makes no provision for trade between the Indians of the two countries. It simply provides that the Indians in one part of the territory of Great Britain shall not be interfered with while trading with those in another part, or with those in territories which are not the possessions of either country. It further provides that the natives are to resort with equal freedom whenever they please, from the territories of the one country to the territories of the other. But nothing is said of any other class of the population having a like privilege.

The French felt, as they were much less numerous than the English, that it would be absolutely necessary to exercise the utmost vigilance if they were to retain control over the Indian population in their extensive dominions. Governor Dongan, of New York,

* Letters of Governor Burnet to the Board—French and English affairs—M. de Longueuil's interpretation of the late Treaty, etc., Dec. 4, 1726. Eng. MSS. Vol. VIII. p. 515. Archives de Paris 1ère série Vol. VII. pp. 479, 515, 524; also M. de la Galissonniere to Governor Clinton, Eng. MSS. Vol. 4, p. 221.

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as early as 1685, licensed several persons, among whom was La Fontaine, a Canadian, to hunt beaver among the Indians of the North-West. A similar license was given to Captain Roseboom, of Albany. They went as far as Michillimackinac. They were well received by the Indians, and invited to return every year. The Indians of the North-West desired the Senecas to open for them a path to Albany.

In September 1686, several parties, led by Roseboom and La Fontaine, set out again. They were to winter among the Senecas and go to Michillimackinac in the spring. In the spring, a second party was organized, under Major McGregor, with Vaile as an interpreter. McGregor was to overtake and lead both parties to the country of the Ottawas. From this second expedition they safely returned. In 1687 Durantaye was in charge of Fort Pontchartrain, and Du L'Hut of Fort St. Joseph on the River St. Clair, near the site of the present Fort Gratiot, and Tonty was ordered to join them. Captain Roseboom and his party of twenty-nine whites and five Indians were taken by Durantaye, near Michillimackinac, and Du L'Hut and Tonty took McGregor and his party of twenty-nine whites, six Indians, and eight prisoners in the St. Clair River. They were delivered to the Marquis de Denonville at Niagara. La Fontaine was shot, and the rest were sent to Fort Frontenac.* To prevent a repetition of these adventures, they strengthened Detroit. They repaired Fort Frontenac. In 1678 La Salle had built a pallisade fort at Niagara.† The Marquis de Denonville greatly enlarged and strengthened it in 1686, and for some time a garrison of 100 soldiers were kept there, but they were subsequently withdrawn.‡ The fort was renewed in 1721. This fortress gave the French control over the commerce of the interior. It won for them the respect of the Iroquois, and it prevented the fur traders of Albany from making excursions into the upper country. MM. Vandreuil and Begon in a report to their government on this post say, that it is about four leagues from Lake Erie; that it is the only pass of the Indians who come from the upper countries; that there is a portage necessary to be made here about 12 miles in length, over which the Indians must carry their canoes.§

In 1721 the Governor of New York informed the British Government that the French were building a fort at Niagara; that Sieur de Jonquiere was strongly urging the Indians to abandon the English interest altogether; that French flags had been hoisted on the capitol of the Senecas; that these Indians were ready to revolt; that priests and blacksmiths had been sent among them; that they were about being persuaded to prevent the English from passing through their country; and that M. de Longueuil had gone thither for the purpose of inducing them to throw off their ancient allegiance to Great Britain.||

The English complained that the French, by building Fort Niagara, had practically closed the road to Albany against a trade with the Western Nations, contrary to the

* Tonty's Memoir. N. Y., His. Col. Vol. III. pp. 250, 252, 256, 395, 430-1, 434, 437, 438, 476. Vol. IX: 225, 297, 302, 308, 318, 383, 1023.

† Before Dongan's arrival in New York, but two of the colonists (Greenhalgh and his comrade) had ever gone as far west as the country of the Senecas.

‡ Tonty's Memoir; Falcouer's Mississippi; Parkman's Discoveries of the West

§ N. Y. H. Col. Vol. 9; 287, 296; Archives de Paris, 2nd Serie, Vol. 5, pp. 189, 252.

|| Archives de Paris 1ère Serie, Vol. VII, pp. 117, 197; N. Y. Hist. Doc. Vol. VI.

¶ Archives de Paris, 1ère Serie, vol. VII, pp. 204-209. English MSS., vol. III, pp. 447, 448, 460, 473.

N. Y. Hist. Doc.

These warlike Indians obtained no fixed possession of the regions which they professed to have wrested from neighbouring tribes. Nor is it easy to perceive what way their conquests could have affected any right which the French had acquired, according to the usages of civilized nations. To argue that the warlike invasions of the Five Nations of the countries of the various tribes of Indians between the Ottawa and the Mississippi Rivers effected a permanent transfer of the country, is to ascribe to them a consequence not ascribed by public law to similar invasions by the armies of civilized states.* Although at one time the Peninsula of Upper Canada and the country as far as Michillimackinac was claimed by a Governor of the Province of New York as British territory, the English Government and the later representatives of the Crown in New York and Virginia, confined their claims to the westward of the colonies, to the south shore of Lakes Erie and Ontario, and to the valley of the Ohio.† These pretensions the French resisted. They had long been in possession of northern and western New York. They had colonies and settlements upon the Mississippi, the Illinois, and the Wabash before the Treaty of Utrecht was negotiated. They had uniformly claimed the whole valley of the St. Lawrence and the whole valley of the Mississippi from the time of La Salle's discoveries. They pointed to the Forts at Crown Point and at Niagara, upon the Miamis, the Wabash, the Illinois, and the Mississippi, as evidences of their rights.‡

After the treaty of Aix-la-Chapelle was concluded, the French undertook to erect a

have already got till a more favourable juncture shall give them occasion to make further intrusion upon their neighbours." Lords of Trade to the King, Sep. 8, 1721. N. Y. H. Doc. vol. V. pp. 619-20.

"He (Count de Vergennes) asked me how we went on with the English. I told him we divided upon two points, the Tories and; Penobscot, two ostensible points; for it was impossible to believe that my Lord Shelburne or the nation cared much about such points. I took out of my pocket and showed him the record of Governor Pownall's solemn act of burying a leaden plate with this inscription:—

"May 23rd, 1759, Province of Massachusetts Bay, Penobscot, Dominions of Great Britain. Possession confirmed by Thomas Pownall, Governor."

"This was planted on the east side of the River Penobscot, three miles above marine navigation. I showed him also the other records,—the laying out of Mount Desert, Machias, and all the towns to the east of the River Penobscot." Adam's Diary, Nov. 10, 1782, vol. III. p. 304.

* "Conquest does not *per se* give the conqueror *plenum dominum et utile*, but a temporary right of possession and government." 2. Dallies's U.S. Sup. Court, Rep. 486.

† "Colonel Dongan's letter will notify you sufficiently of his pretensions, which extend no less than from the lakes inclusive to the South Sea. Missilimackinac is theirs. They have taken its latitude; have been to trade there with our Outawas and Huron Indians, who received them cordially..... Unfortunately we had but very few Frenchmen at Missilimackinac at that time.....Sieur de la Durantaye did not overtake the English who met the Senecas on their way to join them and escort them through Lakes Erie and Ontario, until they should be beyond all danger of attack from us.....This union (of the Senecas and English) dates particularly from the year that M. De La Barre went against the Senecas, for whilst he was on the march the Senecas ran to Orange to see Colonel Dongan to request him to take them under his protection, giving themselves up to him by a public instrument, which was recorded and sent to England, and then he caused posts with the English arms to be set up in all their villages..... I annex to this letter a memorial of our rights..... M. Talon had the originals of our entries into possession.....Doubtless he will have given them to my late Lord your father." M. Denonville to M. Seignelay. N. Y. Hist. Doc., vol. IX., pp. 296-7.

‡ Brodhead's New York, Vol. II; Bancroft's U. S., Vol III.

§ N. Y. Hist. Doc., vol IX; see patent to La Salle; Letters of Frontenac, Vaudreuil and others in the Archives de Paris.

cordon of forts extending from the Bay of Fundy to Lake Erie, and along the Ohio and the Mississippi to the Gulf of Mexico, for the purpose of protecting and holding the territory which they claimed as a possession of the Crown of France, against what they regarded as British aggression.¹

In 1698, a branch of the Shawanese, offended at the French, established themselves upon the west branch of the Susquehanna; and two years later they were received by William Penn, as a part of the people of his Province.* In 1724, the Delaware migrated to the Ohio, and in 1728, the Shawanese followed them. They had no sooner gone beyond the mountains than the Canadian traders were amongst them, and M. Jonquiere, a most able and skilful French emissary, visited them. He was already an adopted citizen of the Senecas, and he had crossed over from Lake Erie to these Indian tribes. In 1730, he induced them to go to Montreal to visit the Governor of Canada, and there receive presents from him.†

On account of the hostility of the Iroquois, the French explorers, for several years, were cut off from Lakes Erie and Ontario. They were obliged to go to the Upper lakes and the Mississippi by the way of the Ottawa and French rivers. But the building of Forts Frontenac and Niagara re-opened the route to the west by these lakes. La Salle's route was the long and circuitous one to St. Joseph's River, through Lakes Huron and Michigan; up this river to the nearest point of the Kankakee—a branch of the Illinois; and down the Illinois to the Mississippi. In 1716, the western traders went from Lake Erie up the Miami, to the place where Fort Wayne now stands, and from thence to the Wabash. It was not until about the time of Jonquiere's visit to the Shawanese, that the route from Lake Erie to the Alleghany River was opened.‡

As early as 1710, Governor Spottiswood, of Virginia, had explored the passes through the mountains. Virginia, too, had profited by the knowledge of the Indian hunters, who had discovered a pass by Wells Creek to the Ohio. It was by this pass that they carried their goods to the Indians in 1750. Governor Spottiswood sought to form a company, to whom were to be given a monopoly of Indian trade, who were to have been required to make explorations and settlements, and to build forts through the western country, in order to hold it against the constant encroachments of the French. The people of Virginia opposed the monopoly; and as nearly a thousand miles of forest separated Williamsburg from Cohokia, Kaskaskia, and other settlements in the Illinois country, nothing could be done.§

1 Count de la Galissonniere writes to Chevalier de Longueuil, Commandant at Detroit, that "Though we be at peace, every attempt of the English to settle at River a la Roche, White River, the Beautiful River, or any of their tributaries, must be resisted by force; and should this fail, they must in every case be summoned to retire, and warned of the disasters which may overtake them should they not obey."—N. Y. Hist. Doc. Vol. X.

* Bancroft's Hist. U. S. Vol. III. Parkman's conspiracy of Pontiac, Vol. I. Proud's Hist. Pennsylvania. † Bancroft's Hist. Vol. III.

‡ Gov. Spottiswood's letter to the Board of Trade, 14th August, 1718, on the French Settlements of Louisiana, and the route to them from Montreal. Pownall's MS., Vol. IV. p. 158. Parkman's Discoveries of the Great West. Albach's Annals. N. Y. Hist. Doc., Vol. V. L. D. 22.

§ Bancroft's Hist., vols. III. and V., Eng. Ed. See Governor Hunter on the effects of the French forts and settlements of Louisiana on British interests; also Keith's project for preventing communication between the French settlements on the St. Lawrence and Mississippi, Pownall's MSS. vol. IV. pp. 165, 354.

Between 1748 and 1757, the British Government had made several large grants, which in the aggregate amounted to 3,000,000-acres of land. These grants were said to extend from the Alleghany Mountains to the border line of Canada; but where this border line might be the grants did not state.*

The French authorities became alarmed at the efforts of the English traders to carry on a traffic with the Indians; at the numbers of persons who were crossing the mountains from Pennsylvania for the purpose of settlement; and at the large grants acquired by the companies, as already referred to, upon condition of colonization. Upon the 10th of May, 1744, Vaudreuil wrote to the Government of France, pointing out the danger to the possessions of France of allowing the English to build trading houses among the Creeks, and other Indian tribes. In 1749, Galissonniere, the Governor of Canada, resolved to place in the valley of the Ohio evidences of the French possession of the country. Lieutenant Louis Celeron de Bienville was sent, with three hundred soldiers, to bury lead plates in the mounds and at the mouths of rivers, on which were engraved the claims of the King of France to both sides of the Ohio valley.† 2

In 1716, the Governor of Virginia advocated the purchase of the Ohio valley from the Indians; and the Duc de Choiseul mentions that the London newspapers advocate the extension of colonization and settlement on the side of Acadia. The French were confirmed in their fears of British aggression. Galissonniere pointed out that if English demands, in reference to the limits of Acadia, were complied with, they could shut Canada from the sea; and that if the Alleghanies were abandoned as the boundary between English and French possessions, the English colonists, being much the more numerous, would soon occupy the country about the lakes and along the Mississippi, and the French colonists would be confined to the north shores of Lake Ontario and the St. Lawrence. He urged upon his Government the necessity of providing for the immediate settlement of the Illinois country, Niagara, and Detroit. The Fort at Detroit was rebuilt and garrisoned. The Fort at Green Bay was also reconstructed. A new fort was erected in the country of the Sioux. A stone fort was ordered to be built at Toronto, and another on the south shore of the St. Lawrence, at Ogdensburg.‡

In 1750, Galissonniere sent to the French Government a memorial advising a general system of fortifications for Canada and Louisiana.§

In 1753, Fort Presqu' Isle was built. As soon as this fort was finished, the French marched southward, cutting a waggon-road twenty-one miles to the River Aux Boeufs, where they built another fort. They then ordered fifty men to the mouth of this river, and built a third fort at its junction with the Ohio. They armed these forts at first with

* See Franklin's Works, vol. IV.; Albach's Western Annals; Bancroft's Hist. Vol. III.; Burk's Virginia; Marshall's Hist. Kentucky.

† Bancroft's Hist., vol. III.; Entick's History of the Seven Years' War, vol. I.; N. Y. Hist. Doc., vol. IX.; Archives de Paris, 1ère Série, vol. X., Procès-verbal de prise possession de la Belle rivière (Ohio), etc.; Lettre de M. Poyseulx, p. 169.

2 See the correspondence between Lords Albemarle and Holderness and Rouillé, in reference to four English traders seized beyond the Ohio, whose goods were confiscated and themselves sent prisoners to Rochelle. Entick, vol. 1 pp. 45-49.

‡ Archives de Paris 1ère Série, Vol. X.; N. Y. Hist. Doc., Vol. IX.; Bancroft's Hist., Vol. III.

§ Archives de Paris, 1ère Série, Vol. X., p. 261.

300 soldiers, but not long after they sent forward 1,200 more into the valley of the Ohio. Fort Mechault was built a little later, opposite Fort Venango, and still later they completed Fort du Quesne.*

Governor Dinwiddie, of Virginia, sent George Washington to the Commander of the French forces in the wilderness of north-western Pennsylvania, to demand from him his object in invading British territory in a hostile manner. The Governor directed Washington to proceed to Logstown, on the Ohio; to address himself to the Sachems of the Six Nations, to acquaint them of his orders, and to ask from them a sufficient number of their warriors to accompany him as a guard; to ascertain the number of the French upon the Ohio and in the adjacent country; how they were to be assisted from Canada; what were their means of communication; what was the time required; what number of forts had they erected; how were they garrisoned and appointed; and what distance were they from each other.†

During Washington's absence, the Ohio Company, which had five years before re-

* Deposition of Coffin; Albach's Western Annals, pp. 101-105.

† It appears from Washington's Journal that on the 25th of November he met with a few French deserters, from whom he got intelligence that they were part of 100 men who had been sent with eight canoes, laden with provisions, from New Orleans to Kaskaskias, with a promise of being joined there by an equal number of French to convey them and their stores up the Ohio; that the French had built four small forts between New Orleans and the Black Islands in the Ohio, having thirty or forty men each and a few small cannon; that there were thirty-five companies of soldiers at New Orleans; that there was a fort at the Black Islands with eight guns and several companies; that there was also a fort at the mouth of the Wabash. He learned from an Indian trader that the French had built a fort on Lake Erie, at Presqu' Isle, and another at a small lake fifteen miles south, with a large waggon-road between them. Washington arrived at Venango, an old Indian town at the mouth of French Creek, on the Alleghany, 4th December, 1753. He found the French colours hoisted on a house from which they had driven the owner, John Frazer. Here he met Captain Jonquiere, who told him they intended holding the Ohio; that it was their right; that it had been discovered by La Salle eighty years before; that he had orders to make all the English prisoners who attempted to trade upon the Ohio. Upon delivering to the French Commandant Governor Dinwiddie's letter, ordering him to retire from the dominions of His Britannic Majesty, he returned by Washington the following answer:—"Sir,—As I have the honour of commanding here in chief, Mr. Washington delivered to me the letter which you wrote to the Commander of the French troops. I should have been glad that you had given him orders, or that he had been inclined to proceed to Canada to see our General, to whom it better belongs than to me, to set forth the evidence and the reality of the rights of the King, my master, to the lands situate along the River Ohio, and to contest the pretensions of the King of Great Britain thereto. I shall transmit your letter to the Marquis Du Guisne, or Du Quesne; his answer will be a law to me. And if he shall order me to communicate to you, sir, you may be assured that I shall not fail to despatch it forthwith to you. As to the summons you send me to retire, I do not think myself obliged to obey it. Whatever may be your instructions, I am here by virtue of the orders of my General; and I entreat you, sir, not to doubt one moment but that I am determined to conform myself to them, with all the exactness and resolution which can be expected from the first officer. I do not know that in the progress of this campaign anything has passed which can be reputed an act of hostility, or that is contrary to the treaties which subsist between the two Crowns; the continuation whereof so much interesteth and is as pleasing to us as the English. Had you been pleased, sir, to have descended to particularize the facts which occasioned your complaint, I should have had the honour of answering you in the fullest, and, I am persuaded, the most satisfactory manner, &c.

LEGARDEUR DE ST. PIERRE.

From the Fort sur la Rivière au Boeuf,

December 15, 1753.

† See Dinwiddie's Letter of Instructions in Albach's Annals, p. 110. Entick's History, vol. I. pp. 97, 98.

ceived a grant of land from the British Government west of the mountains, had taken measures to erect a fort at the junction of the Alleghany and Monongahela Rivers, and to establish a settlement at this point. When Washington returned with the letter of St. Pierre, the French Commandant, it was evident that the French intended to hold the country as their rightful possession, and that victory alone could make it British territory. The Virginians prepared for active hostilities, but the Legislatures of New York and Pennsylvania, when called upon for aid, began discussing the question whether the French had really invaded British territory or not.*

In the spring of 1754, M. Contrecoeur, who had become Commandant of the French forces upon the Ohio, demanded the immediate surrender of the unfinished fortress of the Ohio Company. He asked the English by what authority they had come to fortify themselves within the dominion of the King, his master. He declared their conduct to be so contrary to the Treaty of Aix-la-Chapelle, that he knew not to whom to impute such usurpation. He said the lands along the Ohio were the incontestable possessions of the King of France. Ensign Ward, who, with a few British troops, was then in charge of the unfinished fort at the forks of the Ohio, was ordered to retire peacefully with his men from the dominions of the French King. Ward surrendered the fort and retired up the valley of the Monongahela River. The fort of the Ohio Company was at once finished by the French, and while in their possession was known as Fort Du Quesne. This act was followed by the defeat and death of Jumonville, and the surrender to the French of Fort Necessity.†

By the Treaty of Utrecht, Article 12, "All Nova Scotia, or Acadia, with its ancient limits and with all its dependencies, was ceded to the Crown of Great Britain." Under this Article the English claimed the whole country east of the Penobscot and south of the St. Lawrence, while the French maintained that Acadia, with its ancient limits, embraced only a part of the peninsula which constitutes the present Province, and maintained their right to the remaining part of the peninsula, together with the country south of the St. Lawrence and east of the Penobscot, as a part of Canada. The sovereignty of Acadia and its confines in the patent of De Monts (1603) extended from the fortieth to the forty-sixth degree of north latitude. In 1604, he established his colony at Port Royal. In 1607, this patent was revoked, and a new patent issued to Poutrincourt, by Henry IV., of Port Royal. Port Royal was thus separated from the rest of the peninsula.‡ In 1621, James I. granted a patent to Sir Wm. Alexander for all the country east of the St. Croix and south of the St. Lawrence,§ thus making a grant of a country which had before been granted by the French King and occupied by French colonists. France had greatly enlarged its boundaries and made it dependent upon Canada. England had never been in the possession of the shore of the Lower St. Lawrence, nor had the boundaries of Acadia or Nova Scotia while in her possession always been the same.

* Washington, Journal. Proud's Hist. Pennsylvania.

† Craig's History of Pittsburg. Albach's Annals. English MSS., vol. V. p. 4. Entick's History, vol. I. pp. 96-114.

‡ Voyages de Champlain, pp. 40, 99.

§ Pownall MSS., Vol. IV. p. 253.

A disposition was expressed on both sides in favour of a peaceful settlement of their territorial disputes. In September, 1750, William Shirley and William Mildmay were appointed Commissioners on behalf of Great Britain, and Gallissoniere and De Silhouette on behalf of France. They met at Paris for the purpose of determining the limits of the English and French possessions along their disputed boundaries in North America. The English Commissioners opened their case with a recitation of the 12th Article of the Treaty of Utrecht, in reference to the limits of Acadia. They gave as "the true boundaries—on the west towards New England, by the River Penobscot, *alias* Pentagoet, beginning at its entrance and from thence drawing a straight line northward to the river St. Lawrence, or the Great River of Canada. On the north by the said river of St. Lawrence going along the south side of it to Cape Rosiers, situated at its entrance. To the east by the great Gulf of St. Lawrence from the said Cape Rosiers, running south-eastward by the Islands of Bachalas or Cape Breton, leaving these islands at the right, and the Gulf of St. Lawrence and the islands belonging thereto on the left, unto the Cape or Promontory called Cape Breton. And to the south, by the great Atlantic Ocean, drawing to the south-west from the said Cape Breton by Cape Sable, taking in the island of that name, round about the Bay of Fundy, goes round to the country at the entrance of the River Penobscot *alias* Pentagoet." The French Commissioners denied that France ever intended to cede the territories beyond the peninsula as within the ancient limits of Acadia. They affirmed that the ancient limits of Acadia extended from the extremity of La Baye Françoise to Cape Foucher, and then along the coast as far as Cape Canso. These limits were very much circumscribed. The French Commissioners proposed to transfer to England a very much smaller territory than she had a right to demand. The discussions and memorials were protracted through five years. The English memorials, which were said to have been written by Charles Townshend, were prepared with a great deal of ability; but they will only convince those who have not fully considered the subject to which they relate. The French, in proof of their view of the ancient limits of Acadia, produced maps and histories relating to that country. They referred to the works of Denys, Champlain, and Escarbot. They produced the maps of Halley, Popple, and Salmon, and others. The English Commissioners referred to the maps of 1625, in the 4th volume of Purchase's Pilgrim; to the map of Laet, under the title of *Indiæ Occidentalis Tabula Generalis*; of Berry, entitled *North America divided into its principal parts*,—in King Charles II's time; Morden's *English Empire on the continent of America*; Thornton's *New Chart of the sea coast of Newfoundland, New Scotland, New England, &c.*; also the maps of De Lisle, Bellin, and d'Anville, de Fer, and Gerdeville. They say although many of these maps do not mark out the ancient limits as the Commissaries of His Britannic Majesty contend for them, yet every map differs from the description of the ancient limits given by the French Commissaries in some essential point.*

In 1605 a French settlement had been formed at Port Royal, under a Charter granted by the King to De Monts. In the autumn of 1605, De Monts returned to Europe, and

* *Mémoires des Commissaires, &c.*, Vols. I., II., III., IV. *Memorials of the English and French Commissioners. Conduit des François par rapport à la Nouvelle Ecosse, par T. Jefferys.* Entick's History, Vol. I. pp. 13-63. *Bancroft's U.S.*, Vol. III.

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I. p. 61.

left his company in charge of Ponte Grave, who with Champlain and Champdore, were instructed to explore the adjacent country.

De Monts entered into new engagements with Poutrincourt, who, accompanied by Escarbot, the historian, returned to Port Royal. The colony for a time was prosperous, but was broken up by Argall, as already stated, in 1613. In 1623 all Acadia, or Nova Scotia, was given in marriage with the daughter of Charles I. to the King of France. In 1627 it was retaken from the French by Sir David Kirk; but it was again ceded to France by the Treaty of St. Germain-en-Laye, in 1632. In 1654 it was again reconquered under Cromwell, who refused to surrender it. In 1662, Charles II., notwithstanding the remonstrances of the New England colonists and of Parliament, delivered it again to France, and it was confirmed to her in 1667, by the Treaty of Breda.¹ It was retaken by the colonists of New England in 1690, and restored to France by the Treaty of Ryswick in 1697. It was again reduced by the English and colonial forces in 1710, and confirmed to the Crown of Great Britain, by the Treaty of Utrecht in 1713.* What England had a right to contend for, was the *ancient limits* of Acadia, and the ancient limits of Acadia did not embrace the country on the south bank of the St. Lawrence, nor any territory north of the forty-sixth parallel of latitude. England never had been in possession of the south shore of the St. Lawrence as a part of Nova Scotia. Frequently as the sovereignty of Nova Scotia or Acadia had been changed, the country north of the forty-sixth parallel, whether a part of Acadia or not, while Acadia was a French province, had never been part of it when in possession of the English.† That England had a right to claim the whole peninsula of Acadia seems clear. That she had a right to claim the territory along the western coast of the Bay of Fundy, is fairly arguable. That she could claim the whole country to the St. Lawrence, under the Treaty of Utrecht, as Acadia, was preposterous. For the purpose of showing that no such vast extent of country was intended to be ceded, the French Commissioners pointed out that it would place Canada at the mercy of Great Britain; that she could shut it out from sea, and seize it the first

¹ Charles II. having given to Sir William Berkeley, Lord Clarendon, and a few other courtiers, the whole of the southern part of the Continent, he granted to James, Duke of York, the country between Pemaquid and the St. Croix. He revived the proprietary rights to New Hampshire and Maine, in order to obtain them for the Duke of Monmouth. He granted the country from the Connecticut River to the Delaware Bay, although it at the time was covered by the Charter of Winthrop and the possession of Holland, to the Duke of York. The grant of Nova Scotia to Sir Thomas Temple was not revoked, while Acadia, with undefined limits was restored to the French. See Bancroft's Hist. Vol. I. p. 401, Eng. Ed.

* Entick's History, Vol. I. pp. 174, 176. Convention passée à la prise de Port Royal entre le General Anglais, Robert Sedgwick et le Sieur de la Verdure, comme Capitaine Commandant au Port Royal pour le Roi de France, 1654. Archives de Paris 3ème Série, Vol. I. p. 1.

Traduction informelle de la concession faite par Oliver Cromwell aux Sieurs Chs. de St. Etienne, de la Tour, Baron d'Ecosse, Thomas Temple, et Guill. Crown, chevalier du pays et territoire de l'Acadie et de partie du pays nommé le Nouvelle Ecosse, 1656, Ibid. p. 9.

Cession par le Roy d'Angleterre au Roy de France, en execution du traite de Breda, &c., Feb. 1668. Ibid p. 26.

See also Ibid. pp. 31, 35, 39, 45, 50, and other papers in this volume.

† Sir W. Alexander's Patent, Pownall MSS. vol. IV. p. 253. Capt. John Alden's Memorial to Lord Bellmont on the boundaries of Nova Scotia, April 1700. Ibid. 167; also p. 374. Halliburton's Nova Scotia, vol. I. p. 61.

favourable opportunity. The British Commissioners reply, "that the rights of one nation are not to be determined upon the apprehensions of another; nor is Great Britain to have her possession of Nova Scotia or Acadia narrowed or pared down to the idea of the French commissaries, and reduced to the south-east part of the peninsula, merely because, if fully possessed and improved by Great Britain, it might give umbrage to the French settlements in Canada."^{*1}

A large extent of country lying south of the St. Lawrence, Lake Ontario, and Lake Erie, and along the Ohio river was claimed both by the Crowns of England and of France. This territory the French were the first to explore and occupy. They regarded the fur trade as a matter of the first importance. It was mainly to retain the exclusive control of this trade that they extended their trading posts and settlements from the Atlantic to the Rocky Mountains.[†]

They had opened communications between the St. Lawrence and the Mississippi by the valley of the Ohio, in order that they might the better protect their western possessions. They wished, both by the Mississippi and through the State of Maine, to retain access to the ocean throughout the year.[‡]

Cape Breton being in the possession of France, the colonists of New England pressed upon the consideration of the mother country the necessity of colonizing Nova Scotia. They described its produce; its capacious and safe harbours. They showed by its situation it might be made a barrier against the growing trade of France; that it might serve to control the fur trade and the fisheries, and that it would effectually counteract any expedition set on foot against the settlements to the southward upon the Atlantic coast. In March, 1749, an Order in Council was passed, "Providing for the better peopling and settling of the Province of Nova Scotia; for establishing a civil government; and for extending and improving its fishery." Cornwallis was made Governor. Sieur de la Corne took possession of several places within the peninsula, which were within the limits of Cornwallis' jurisdiction. The Earl of Albemarle complained of the conduct of Jonquiere upon the Ohio, and of La Corne in Nova Scotia. The Marquis de Puisieux promised to inquire into the matter. Soon after, the Earl of Albemarle received a copy of a letter written by M. Rouillé to M. de la Jonquiere, in which he was requested to forbear committing hostilities against the subjects of England. But the French did not for a moment relax their efforts to complete their plan of erecting forts from the Bay of Fundy to the Mississippi.[§]

In January, 1755, France proposed to restore everything to the state it was in before

* Memoires, etc. before referred to.

[†] "I told him (Count de Vergennes) that the grant of Nova Scotia by James I., to Sir William Alexander, bounded it on the River St. Croix; and that I was possessed of the authorities of four of the greatest governors the King of England ever had, Shirley, Pownel, Bernard and Hutchinson, and the learned writings of Shirley and Hutchinson in support of it," i.e., that Massachusetts reached beyond the Penobscot River. Adam's Diary, 10 November, 1782. Vol. III. p. 304.

[‡] Numerous references might be given to the New York Hist. Dco., Archives de Paris, and to the histories of Garneau, Bancroft, Brodhead, Charlevoix, and others.

Gallissonniere's Memoir.

[§] See Correspondence in the 1st vol. of Entick's History; also Bancroft, vol. III.

the last war, and to refer all disputes to the Commissioners at Paris. They proposed that before the enquiry began that "positive orders should be immediately sent to our respective governments forbidding them thereafter to undertake any new enterprise or to proceed to any acts of hostility, enjoining them on the contrary to put things without delay, and without regard to the lands on the Ohio, on the same footing that they were or ought to have been before the last war; and that the respective claims be referred to the Commission established at Paris, so that the two Courts might terminate the difference by a speedy accommodation."

On the 22nd of January, the English Government replied that the west of North America must be left as it was at the treaty of Utrecht, confirmed by Aix-la-Chapelle. They proposed "that the possession of the lands on the Ohio should be restored to the footing it was on at the conclusion of the Treaty of Utrecht, and agreeable to the stipulations of the said Treaty which was renewed by that of Aix-la-Chapelle; and moreover, that the other possessions in North America should be restored to the same condition in which they actually were at the signing of the said Treaty of Utrecht, and agreeable to the cessions and stipulations therein expressed; and then the method of informing the respective Governors and forbidding them to undertake any new enterprise or act of hostility might be treated of; and the claims of both parties reserved to be speedily and finally adjusted in an amicable manner between the two Courts."

On the 6th of February, France answered that the claims put forward by England were untenable. She maintained that England should desist from three points: from any claim to the southern side of the basin of the river St. Lawrence, Lake Ontario, and Lake Erie; to the twenty leagues of country along the Bay of Fundy; and to the lands between the Ohio and the Wabash; and that the English should retire east of the Alleghany Mountains, and the French to the west of the River Ohio. This offer was agreed to by England, on the 7th of March, provided the French would destroy all their forts on the Ohio and its branches. This proposition the French declined to accept.

The two Governments failing to agree upon a basis for negotiation, the English Government stood by what they regarded as their right under the Treaty of Utrecht. In a memorial delivered to the Duke de Mirepoix, on the 7th of June, 1755, they observe: "As to the exposition which is made in the French memorial of the 15th Article of Utrecht, the Court of Great Britain does not think it can have any foundation, either by the words or the intention of the Treaty.

"The Court of Great Britain cannot allow of this Article as relating only to the persons of the savages, and not to their country. The words of the Treaty are clear and precise, that is to say, the Five Nations, or Cantons, are subject to the dominion of Great Britain; which, by the received exposition of all treaties, must relate to the country as well as to the persons of the inhabitants. It is what France has acknowledged in the most solemn manner. She has well weighed the importance of this acknowledgment at the time of signing the Treaty, and Great Britain can never give it up. The countries possessed by these Indians are very well known, and are not at all so undetermined as it is pretended in the memorial. They possess and make them over as other proprietors do in all other places. . . . What ever pretext might be alleged by France in considering these countries as the appurtenances of Canada, it is a certain truth that they belonged, and (as they have not been given up or made

over to the English), belong still to the same Indian nations, which, by 15th Article of the Treaty of Utrecht, France agreed not to molest: *nullo in posterum impedimento, aut molestia afficiant.*

"Notwithstanding all that has been advanced in this Article, the Court of Great Britain cannot agree to France having the least title to the River Ohio, and the territory in question.

"Even that of possession is not, nor can it be alleged on this occasion, since France cannot pretend to have had any such before the Treaty of Aix-la-Chapelle, nor since, unless it be that of certain forts unjustly erected lately on the lands which evidently belong to the Five Nations, or which these have made over to the Crown of Great Britain, or its subjects, as may be proved by treaties and acts of the greatest authority. What the Court of Great Britain maintained, and what it insists upon, is, that the Five Nations of the Iroquois acknowledged by France are, by origin or by right of conquest, the lawful proprietors of the River Ohio and the territory in question. And as to the territory which has been yielded and made over by these people to Great Britain, which cannot but be owned must be the most just and lawful manner of making an acquisition of this sort, she reclaims it as belonging to her, having continued cultivating it for above twenty years past, and having made settlements in several parts of it, from the sources even of the Ohio to the Pichawillanes, in the centre of the territory, between the Ohio and the Wabachi."

For several years the English Ministry seemed indifferent to the encroachments of France in Nova Scotia, and in the valley of the Ohio. In 1749 there was no English settlement west of the Alleghanies, except the cabins of a few border men in western Virginia. A few Pennsylvania traders strolled from tribe to tribe south of Lake Erie. Before the accession of Lord Halifax into the Government, the English Ministry were accused of being ignorant of the boundaries of the British possessions in America. They were accused of being generous to grant liberal subsidies to the extent of hundreds of thousands of pounds upon every paltry alarm to petty German princes merely for the sake of preserving what Ministers call the balance of power, while they have been indifferent to British interests in America. Lord Halifax was resolved on securing the possession of Acadia and the Ohio valley.† The French Government were as firmly resolved to hold the country which they had in their possession. After the signing of the Treaty of Utrecht, France retained the fort at the mouth of the St. John's river, as not being within the ancient limits of Acadia. When it began to be insinuated that Acadia was ceded to England, embraced but a part of the Peninsula, Abbé la Loutre, a French missionary, at Fort Lawrence, favoured this construction of the Treaty. He induced the Acadians to withdraw from their former dwelling places, and to settle at the isthmus, in order to serve as a barrier against the English. The Acadians were forcibly carried away from the Province and scattered amongst the English colonists.‡

Hostilities were actually being carried on in Nova Scotia and along the Ohio for some time before war was declared. But this state of things was changed by the expe-

* Secret Journals of Congress, Vol. 4; Entick's History; N. Y. Hist. Col. vol.—Bancroft's History of the United States. Albach's Annals. Mahon's History of England. Walpole's Memoirs George II.

† Letter from a Resident of Virginia to a Merchant in London. Entick's Hist. vol. I. pp. 105—109.

‡ Board of Trade to Bedford, 16th October, 1749. Bancroft's Hist. vol. III, pp. 32, 33, et seq. Entick, vol. I.

* Walpole's Memoirs. Mahon's Hist. of Eng.

† Walpole's Memoirs.

‡ Ibid. Albach's Annals.

§ Montcalm's letter.

¶ Entick's History.

dition of Braddock against Fort Duquesne, and by the victory of Captain Howe.* In July, 1755, a part of Admiral Boscawen's fleet, under the command of Captain Howe, had fought and taken three French men-of-war. The Duke de Mirepoix had remained in England writing letters to his own Government as to the pacific disposition of the English. The Duke of Newcastle had applied himself to deceive the French Minister, and he succeeded. The Duke de Mirepoix abruptly departed from England without taking leave. He suffered a temporary disgrace at home for his credulity.† The French King was exasperated, and declared he would never pardon the piracies of that insolent nation. Colonel Moncton, at the head of 3,000 troops, had laid siege to the important fort of Beau-sejour, and carried it in four days. Two smaller forts surrendered immediately, but the expedition of Braddock, at the head of 2,000 men, was a failure.‡ He lost a considerable portion of his men and his instructions, which fell into the possession of the French. They published them, as an evidence of English hostility and treachery. Both parties seemed to have meditated war, but it so happened that it was begun by the English. The French had succeeded in uniting the Indians with them in defence of their North American possessions, but their support did not prevent the conquest of Canada. The Marquis de Montcalm predicted the fall of Canada in his correspondence with Marshal de Belleisle. He declared that the Intendant was occupied solely with making a fortune for himself, his sycophants and adherents; that cupidity had seized officers and store-keepers; that the Government were being defrauded; that the resources were being wasted; that the commissaries at St. John, on the Ohio, and with the Indians in the upper country, were amassing immense fortunes at the expense of the public interests; that the French cause was ruined by the venality and corruption that every where prevailed; that every one seemed anxious to make a fortune before the country passed into other hands; and that many of its officials desired its conquest as the only effectual means of concealing their infamy.§ However this may be, Quebec was taken in 1759, and at the capitulation of Montreal, in September, 1760, Canada was delivered up by the Marquis de Vaudreuil to General Amherst.||

It is rather remarkable that the Articles of Capitulation do not any where expressly say that Canada is to be given up to the English, but this, however, may be very obviously inferred from several of them. On the 7th of September, 1760, Vaudreuil sent Colonel de Bougainville and Captain de Lac with proposals for Capitulation, accompanied by a brief note, in which he informs General Amherst that "you may rely on all that the said Colonel shall say to your Excellency in my name." Sir Jeffry Amherst returned the terms of Capitulation with those which he had resolved to grant, at the same time informing the Marquis de Vaudreuil that he shall make no alteration in those terms. M. de Bougainville was again sent to General Amherst with a note from the Governor in which he stated "I send the said Colonel back to your Excellency, and I persuade myself that you will allow him to make by

* Walpole's Memoirs of the Reign of Geo. II., Vol. II. chaps. 1 and 2. Entick's Hist., Vol. I. Lord Mahon's Hist. of Eng., Vol. IV. p. 46 *et seq.*

† Walpole's Memoirs of the Reign of Geo. II., Vol. II. p. 28.

‡ *Ibid.* Albach's Annals.

§ Montcalm's letters in the N. Y. Hist. Doc., Vol. X.

|| Entick's History, Vol. IV. pp. 436-480, where the correspondence will be found.

word of mouth, a representation to your Excellency which I cannot dispense myself with making." To this the following reply was made :—

CAMP BEFORE MONTREAL,

September 7th, 1760.

SIR,—Major Abercrombie has this moment delivered to me the letter with which your Excellency has honoured me, in answer to that which I had addressed to you with the conditions on which *I expect that Canada shall surrender*. I have already had the honour to inform your Excellency that I should not make any alteration in them : I cannot deviate from this resolution. Your Excellency will therefore be pleased to take a determination immediately, and acquaint me in answer whether you will accept or not.

I have the honour to be, &c.,

JEFF. AMHERST.

The conditions were accepted the following day, when a duplicate of the Articles of Capitulation was sent to Governor Vaudreuil. The first Article provides for the surrender of the garrison of Montreal.

ARTICLE 3 provides :—The troops and militia who are in garrison in the fort of Jacques Cartier, and in the Island St. Helen, and other forts shall be treated in the same manner, and shall have the same honours ; and these troops shall go to Montreal or Three Rivers, or Quebec, to be there embarked for the first seaport in France, by the shortest way. The troops who are in our posts, situated on our frontiers on the side of *Acadia, at Detroit, Michillimackinac, and other posts*, shall enjoy the same honours, and be treated in the same manner.

All these troops are not to serve during the present war, and likewise shall lay down their arms. The rest is granted.

ARTICLE 4.—The militia, after being come out of the above towns, forts, and posts, shall return to their homes, without being molested, on any pretence whatever, on account of their having carried arms. Granted.

ARTICLE 7.—The magazines, the artillery, firelocks, sabres, ammunition of war, and in general everything that belongs to His Most Christian Majesty, as well in the Towns of Montreal and Three Rivers, as in the forts and posts mentioned in the Third Article, shall be delivered up, according to exact inventories, to the Commissaries who shall be appointed to receive the same in the name of His Britannic Majesty. Duplicates of the said inventories shall be given to the Marquis de Vaudreuil.

ARTICLE 12. . . . The Marquis de Vaudreuil shall take with him his papers *without their being examined*. . . . Granted, except the archives, which shall be necessary for the government of the country.

ARTICLE 13.—If before or after the embarkation of the Marquis de Vaudreuil, news of peace should arrive, and that by the treaty *Canada should remain to His Most Christian Majesty*, the Marquis de Vaudreuil shall return to Quebec or Montreal, everything shall return to its former state under the Dominion of His Most Christian Majesty, and the present capitulation shall become null and of no effect.

"Whatever the King may have done on this subject shall be obeyed."

ARTICLE 14. . . . Officers shall take with them their papers, without being examined, and also their equipages and baggage. . . . "Granted.

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ARTICLE as well in the colony of property and merchandises least damage let, or sell them in bills to go to France, which are Montreal. A canoes, fitted

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In these Provisions are are not express

Early in 1761 a view to establish Hans Stanley and the French Court British Ministry correspondence, an end to the war the 26th of March of Prince Gallatin to put an end to separate peace war but he could not

*The Acadians been guilty of treason

except that the Marquis de Vaudreuil and all the officers of whatever rank they may be, shall faithfully deliver up to us all the charts and plans of the country."

ARTICLE 36.—If by the treaty of Peace, Canada remains to His Britannic Majesty, all the French, Canadians, Acadians, Merchants, and other persons who choose to retire to France, shall have leave to do so from the English General, who shall procure them a passage. . . . Granted.

ARTICLE 37.—The lords of manors, the military and civil officers, the Canadians, as well in the towns as in the country, the French settled or trading in the whole extent of the colony of Ca . . . and all other persons whatsoever, shall preserve the entire peaceable property and possession of their goods, noble and ignoble, moveable and immoveable, merchandizes, furs, and other effects, even their ships; they shall not be touched nor the least damage done to them on any pretext whatsoever. They shall have liberty to keep, let, or sell them, as well to the French as to the English; to take away the produce of them in bills of exchange, furs, specie, or other returns, whenever they shall judge proper to go to France, paying their freight as in the 26th Article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal. And for this purpose, they shall have leave to send this year or the next, canoes, fitted out to fetch such of the said furs as shall have remained in those posts.

ARTICLE 48 makes similar provision for the property of officers, civil and military, of France, in Canada.

ARTICLE 39.—None of the Canadians, Acadians or French, who are now in Canada, and on the frontier of the colony, on the side of Acadia, *Detroit, Michillimackinac and other places and posts* . . . countries above, the married and unmarried soldiers remaining in Canada, shall be carried or transported into the English Colonies, or to Old England, and they shall not be troubled for having carried arms. "Granted; except with regard to the Acadians."*

In these Articles of Capitulation, there is nothing said about the limits of Canada. Provisions are made for the surrender of the garrisons at various posts; but some of these are not expressly named in the Articles. They are embraced by the phrase "other posts."

Early in 1761 negotiations were carried on between France and Great Britain with a view to establishing "a safe, honourable and adequate peace" between the two nations. Hans Stanley embarked at Dover on the 24th of May as British Minister to treat with the French Court at Paris, and M. Bussy was at the same time sent to treat with the British Ministry at London. The negotiations were to begin upon the basis of a previous correspondence, in which the Kings of both countries had declared their anxiety to put an end to the war. The last letter in this correspondence was written from Versailles on the 26th of March, by the Duc de Choiseul to Mr. Pitt, and was transmitted by the hands of Prince Gallatin, the Russian ambassador at London. The object of the memorial was to put an end to the alliance between England and the King of Prussia, by establishing a separate peace with England. Mr. Pitt replied at once. He said the King desired peace, but he could not abandon the King of Prussia and his other allies. His letter was ac-

*The Acadians were claimed to be British subjects under the Treaty of Utrecht. All were held to have been guilty of treason in taking up arms on the side of France.

accompanied by a memorial, acknowledging the objects which brought on the war between France and England to be totally foreign to the cause of the war upon the continent of Europe.

On the 15th of July, France proposed :—

I. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the liberty of returning upon any pretence whatever against this cession and guaranty, and without interrupting the Crown of England in the entire possession of Canada.

II. The King, in making over his full right of sovereignty over Canada to the King of England, annexes four conditions to the cession :—

First. That the free exercise of the Roman Catholic religion shall be maintained there, and that the King of England will give the most precise and effectual orders that his new Roman Catholic subjects may, as heretofore, make public profession of their religion according to the rites of the Roman Church.

Secondly. That the French inhabitants, or others who have been subjects of the King in Canada, may retire into the French colonies with all possible freedom and security ; that they may be allowed to sell their effects and transport their property as well as their persons, without being restrained in their emigration on any pretence whatever (except for debt) ; and the English Government shall engage to procure them the means of transportation at as little expense as possible.

Thirdly.—That the limits of Canada with regard to Louisiana shall be clearly and firmly established, as well as those of Louisiana and Virginia, in such manner that after the execution of peace, there may be no more difficulties between the two nations, with respect to the construction of the limits with regard to Louisiana, whether with respect to Canada or the other possessions of England.

[N. B.—M. Bussy has a memorial on the subject of the limits of Louisiana which gives him power to come to a final treaty on that Article with the Ministry of his Britannic Majesty.]

Fourthly.—That the liberty of fishing and drying their cod-fish, may, on the Banks of Newfoundland, be confirmed to the French as heretofore ; and as this confirmation would be illusory, if French vessels had not a shelter in those parts appertaining to their nation, the King of Great Britain, in consideration of the guaranty of his new conquests, shall restore Isle Royal, or Cape Breton, to be enjoyed by France in entire sovereignty. It is agreed to fix a value on this restitution, that France shall not under any denomination whatever, erect any fortification on the Island, and shall confine herself to maintain civil establishments there, and the port for the convenience of the fishing vessels landing there.

On the 27th of July, 1761, Mr. Pitt forwarded the memorial of the Court of St. James to Mr. Hans Stanley in answer to the French propositions, the first two of which relate to Canada. They are as follows :—

I.—His Britannic Majesty will never recede from the entire and total cession on the part of France, without any new limits, or any exception whatever, of all Canada, with its appurtenances ; and His Majesty will never relax with regard to the full and complete cession on the part of France of the Isle of Cape Breton, and of the other islands in the

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Gulf and River of St. Lawrence, with the right of fishing, which is inseparably incident to the possession of the aforesaid coasts, and of the canals or straits which lead to them.

II.—With respect to fixing the limits of Louisiana with regard to Canada or the English possessions situated on the Ohio, as also on the coast of Virginia, it can never be allowed that whatever does not belong to Canada shall appertain to Louisiana, nor that the boundaries of the last Province shall extend to Virginia, or to the British possessions on the borders of the Ohio; the nations and countries which lie intermediate, and which form the true barriers between the aforesaid provinces, not being proper, on any account, to be directly or by necessary consequence ceded to France, even admitting them to be included in the limits of Louisiana.

To which France answered on the 5th of August:—

I. The King consents to cede Canada to England, in the most extensive manner, as specified in the Memorial of Propositions, but His Majesty will not recede from the conditions which he has annexed to the same Memorial, relative to the Catholic religion, and to the power, facility and liberty of emigration for the ancient subjects of the King. With regard to the fishery in the Gulf of St. Lawrence, the King means to maintain the immemorial right which his subjects have of fishing in the said gulf, and of drying their fish on the banks of Newfoundland, as it was agreed by the Treaty of Utrecht. As this privilege would be granted in vain if the French vessels had not some shelter appertaining to France in the gulf, His Majesty proposed to the King of Great Britain the restitution of the Island of Cape Breton; he again proposes either that island, or the island of St. John [Prince Edward], or such other port without fortifications in the gulf, or within reach of the gulf, which may serve the French as shelter, and secure to France the liberty of fishing, from whence His Majesty has no intention to recede.

II. The King has in no part of his Memorial of Propositions affirmed that all which did not belong to Canada, appertained to Louisiana; it is even difficult to conceive such an assertion could be advanced. France, on the contrary, demands that the intermediate nations between Canada and Louisiana, as also between Virginia and Louisiana, shall be considered as neutral nations, independent of the sovereignty of the two Crowns, and serve as a barrier between them. If the English Minister would have attended to the instructions of M. Bussy on this subject, he would have seen that France agreed with England, as to this proposition.

To this ultimatum of France, Mr. Pitt replied on the 17th August, as follows:—

I. The King will not desert his claim to the entire and total cession of all Canada, and its dependencies, without any limits or exceptions whatever, and likewise insists on the complete cession of the Island of Cape Breton and of other islands in the Gulf and River St. Lawrence.

Canada, according to the lines of its limit as traced by the Marquis de Vaudreuil himself, when that governor surrendered the said Province by capitulation to the British general, Sir J. Amherst, comprehends on one side the Lakes Huron, Michigan, and Superior; and the said line drawn to Red Lake takes in, by a serpentine progress, the River Ouabachi (Wabash), as far as its junction with the Ohio, and from thence extends itself along the latter river as far, inclusively, as its influx into the Mississippi.

It is in conformity to this state of the limits, made by the French Governor, that the

King claims the cession of Canada ; a province which the Court of France, moreover, has offered anew by their *ultimatum* to cede to His Britannic Majesty, in the most extensive manner, as expressed in the *Memorial of Propositions of Peace of the 15th July*.

As to what concerns the public profession and exercise of the Roman Catholic religion in Canada, the new subjects of His Britannic Majesty shall be maintained in that privilege without interruption or molestation ; and the French inhabitants or others who may have been subjects of the most Christian King in Canada, shall have full power and liberty to sell their effects, provided they dispose of them to the subjects of His Britannic Majesty, and to transport their property, as well as their persons, without being restrained from their emigration under any pretence whatever (unless in case of debt or for the breach of criminal laws), it being always understood that the time granted for the said emigration shall be limited to the space of one year, to be computed from the day of the ratification of the Definitive Treaty.

II. As to what respects the line to be drawn from Rio Perdido, as contained in the note remitted by M. Bussy of the 18th of this month, with regard to the limits of Louisiana, His Majesty is obliged to reject so unexpected a proposition, as by no means admissible, in two respects :—

1. Because the said line, under colour of fixing the limits of Louisiana, annexes vast countries to that province, which, with the commanding posts and forts, the Marquis de Vaudreuil has by the most solemn capitulation incontestably yielded into the possession of His Britannic Majesty, under the description of Canada ; and that consequently, however contentious the pretensions of the two Crowns may have been before the war, and particularly with respect to the course of the Ohio, and the territories in that part, since the surrender of Canada, and the line of its limits has been traced as aforesaid, by the Marquis de Vaudreuil, all those opposite titles are united, and become valid without contradiction, to confirm to Great Britain, with all the rest of Canada, the possession of those countries on that part of Ohio which have heretofore been contested.

2. The line proposed to fix the bounds of Louisiana cannot be admitted, because it would compromise in another part, on the side of the Carolinas, very extensive countries and numerous nations, who have always been reputed to be under the protection of the King, a right which His Majesty has no intention of renouncing ; and then the King, for the advantage of peace, might consent to leave the intermediate countries under the protection of Great Britain, and particularly the Cherokees, the Creeks, the Chicawas, the Choctaws, and another nation situate between the British settlements and the Mississippi.

The French Government replied on the 9th of September to the English answer of the 17th August, they say :—

I. The King has declared in his first Memorial, and in his Ultimatum, that he will cede and guarantee to England the possession of Canada, in the most ample manner.

His Majesty still persists in that offer, and without discussing the line of its limits marked on a map presented by Mr. Stanley, as that line on which England rests its demand—without doubt the most extensive bound which can be given to the cession—the King is willing to grant it.

His Majesty had annexed four conditions to his guaranty : it seems that England agrees to them ; only the King conceives that the term of one year for the sale of the

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French effects, and for emigration, is too short, and His Majesty desires that it may be agreed to extend the term of one year to eighteen months at least.

As the Court of England has added to the first Article of its answer to the entire and total cession of Canada as agreed between the two Courts, the word *dependencies*, it is necessary to give a specific explanation of this word, that the cession might not in the end occasion difficulties between the two Courts with regard to the meaning of the word "dependencies."

II. The first paragraph, with regard to the limits of Louisiana, contained in the second Article of the answer of England, is agreed to by France. The second paragraph is neither just nor explicit, and it is finally proposed to express it in the following terms :

The intermediate savage nations between the Lakes and the Mississippi, and within the line traced out, shall be neuter and independent, under the protection of the King, and those without the line on the side of the English shall be likewise neuter and independent, under the protection of the King of England. The English traders also shall be prohibited from going among the savage nations beyond the line on either side ; but the said nations shall not be restrained in their freedom of commerce with the French and English as they have exercised it heretofore.

It may be collected from this Memorial that the first Article of the English *Answer* was granted in the full extent which the Court of London required ; France only desired eighteen months, instead of a year, for the emigration.

In granting the first part of the second Article, which *cedes the whole current of the Ohio to England*, France proposed in regard to the second point of that Article, to agree upon the nations which should be reputed neutral between Canada, Carolina and Louisiana. This proposition was the more reasonable because that by agreeing on this division of the possessions of the two nations, an equitable system was adopted, discussions about the limits were prevented for the future, and France did not incur the risk of losing the colony of Louisiana whenever it pleased the Court of London to invade it.

On the 30th of October, M. de Vandreuil addressed the following letter to the Duc de Choiseul :—

MY LORD,—I was astonished to see, by the historical account of the memorial of the negotiations between France and England, what I am charged with by the English, with regard to the limits of Canada, as it is entirely false and groundless. I shall give your Grace a true account of what passed between Mr. Amherst and me on that head. When I capitulated, I traced out no limits whatever, and in all the messages that passed between the English General and me, I made use of the word "Canada" only. Eight or ten days after the surrender of the country, he sent an officer to me for maps, to inform him of the extent of the Colony. I returned for answer that I had none, my maps having been taken away with my baggage at Quebec, in breach of the capitulation of that place ; and the officer then showing me a map which he had in his hand, I told him the limits marked on it were not just, and verbally mentioned others, extending Louisiana on one side, to the carrying place of the Miamis, which is the height of the lands, whose rivers run into the Ouabache ; and on the other, to the head of the Illinois.

What I have the honour to tell you, my lord, is strictly true ; I am not afraid that the English can produce any proof of the contrary—for nothing passed in writing on

this head, nor was any line drawn on any map. I take the first opportunity to acquaint you with this, to prevent any further imposition.

M. de VAUDREUIL."

Colonel Haldimand was the officer referred to by M. de Vaudreuil in this letter, which was published in the Annual Register for 1761. It seems from Mr. Pitt's letter of the 17th of August, that the map which Gen. Amherst had received from Col. Haldimand, had been forwarded to him, and he accurately describes the boundary as marked upon that map, beginning at Red Lake and following the watershed between the St. Lawrence and the Mississippi to the source of the Wabash, and thence down the Wabash and the Ohio to the Mississippi River. When M. Vaudreuil's letter to the Duc de Choiseul appeared, Gen. Amherst was in command at New York, and he addressed the following letter to Col. Haldimand :—

NEW YORK, 1st Nov., 1762.

DEAR SIR,—I have been twenty times at the point of writing to you on a subject which, though of no consequence, I should be glad to know the exact transactions that passed. When I made a report of Canada to the Secretary of State, I transmitted a copy of the part of the map where the limits between Canada and Louisiana were marked, which you delivered to me, and which I acquainted the Secretary of State were done by M. De Vaudreuil. Whether by him, or done in his presence by his direction, comes to the same thing, and the thing itself is of no sort of consequence, as the letter and orders he (Monsieur de Vaudreuil) sent to the officers commanding at Michilimackinac, the Bay, Oocciatanon, Miamis, &c., mark out the boundaries and expressly include those posts in Canada, so that there can be no dispute about it ; yet as I see some altercation has passed in England and France about Monsieur de Vaudreuil's giving the boundaries, I should be glad to know whether he marked the map himself, or whether it was done in his presence, and what passed on that subject ; that I may hereafter be able to say all that was done regarding the whole affair.

I am, with great truth, dear sir,

Your most obedient, humble servant,

JEFF. AMHERST.

To this letter Col. Haldimand replied :—

THREE RIVERS, 10th December, 1762.

DESPATCHED 16TH do.

SIR,—I have received with pleasure the letter Your Excellency did me the honour of writing on the first of December, respecting what passed between Mons. de Vaudreuil and myself on the subject of the limits of Canada. Several times I thought of forestalling it, but I deemed myself obliged to await these orders, to which I intend to conform with all the exactness possible.

About five or six days after I had entered Montreal I asked M. de Vaudreuil if he had no plans, memoirs, or instructive maps concerning Canada. I asked him to let me have them in order that I might forward them to your Excellency ; he replied that he had none, having

* This and Haldimand.

lost them all at Quebec and (to avoid hearing the enumeration he wished to make of his other losses), I contented myself for the time with this reply; but having occasion to speak of it again some days after, he told me that he had found a couple of maps, and passing into another room he had a large map of Western America brought; it was made by hand and folded in the cover of an atlas. There were also some bad plans of forts in a separate roll. Not finding anything instructive on this map, and remembering that I had seen it printed, I called Lieutenant Herring of our battalion, who was in the parlour, and I gave it to him with the other papers which he took to my house. Finally, on the morning of the day that Mons. de Vaudreuil left * [being engaged arranging the rest of the papers I had received from different persons] this map came under my notice and reminded me of the vain attempts I had made to discover from him and from others the extent of this country, and gave birth to the idea of examining it with M. de Vaudreuil. I immediately went to him, getting Ensign Monin to carry the map. I found M. de Vaudreuil, with several members of his household, in the room that overlooks the street; [after having paid my respects] I begged him without any other preamble to be kind enough to show me the limits [that separated] of Canada, [from Louisiana] and conducting him towards the table which was at the end of the room, I opened the map, and after examining it a few moments, I reiterated my request. He appeared very much surprised, and as he did not answer me I passed my finger along the Illinois river, saying: Here is the Illinois. Then he replied that the Illinois had been contested by the two Governors, but that it had been decided they should belong to Louisiana, upon which I took a pencil out of my pocket, and resting my elbows on the map, while M. de Vaudreuil stood beside me, [I marked a spot at the source of the Illinois, and showing him the north, I asked if the line passed that, and having said yes] I asked him, showing him the north of the Mississippi, if the line passed that; and he having said yes, I marked the points from the source of the Illinois, returning up the Mississippi; and asking him once again if I marked correctly, he answered me in these words, (he, M. le Marquis de Vaudreuil, having his eyes fixed upon the map) *take all the north, take all the north*. Then I pointed to Red Lake, which seemed to me the natural limit, without his making the slightest objection; after which I returned on the other side of the Illinois, and not fancying that Loio could even be contested, I said to him, Here we undoubtedly take the mouth of the Wabache; and putting my pencil on the confluence of the Loio and the Mississippi, I traced a line, again coming up this first river and the Wabache, and joining the point where I had [marked] commenced at the source of the Illinois, M. de Vaudreuil still stood beside me and looked at the map without making any objection. [whatsoever.] This line through its different windings, though made off-hand, (with a simple tracing of the pencil) still gave him plenty of time. But whether being occupied with his departure he said yes, indifferently, [or supposing that what I had been doing was of no consequence, he was careless] and without giving it the necessary attention, [and having said yes too lightly, the account] or that in giving a tacit approbation, he sought to give me an erroneous impression,—the account which I have related to you, sir, is none the less [exact] the most exact truth.

* This and the other portions within brackets thus, []. appear in the original as having been effaced by Haldimand.

M. de Vaudreuil, and all the French who remained at Mont Real, were to leave this [morning] day. The companies of militia having assembled to give up their arms, and to take the oath of allegiance, I had no time to [lose] examine this map, and as I thought I understood what was meant by the name of Canada, and that the line was well marked, I closed the map and sent it home by Ensign Monin. Finally, sir, you may rest assured that the map which you have in your hands is the same that was given to me by M. de Vaudreuil eight or ten days after the taking of Mont Real, and that Lieutenant Herring, who is, I believe, at New York [received from my hand in his room to carry] carried to my house ; that it is the same map that was brought back by Ensign Monin to M. de Vaudreuil on the morning of his departure ; and that when I opened it in his room, there were neither lines, nor marks, nor anything to designate the limits ; that the line which now marks them has been traced solely by myself under the eyes of M. de Vaudreuil, to whom alone I addressed myself ; and by all that he told me, I never for a moment doubted that he gave me this line as the true limits of Canada ; and that from the moment I closed this map in his room until I remitted it to your hands, there has been no alteration of any kind whatsoever made in this line.

This, sir, is, on my word, the simple truth of this transaction.

I must own to you, sir, that being convinced that you would ask for intelligence at an earlier date (of the extent of a country which, I believe, never had any fixed limits) of an authentic Act made in virtue of the capitulation, I did not think it seemly to have the map signed by M. de Vaudreuil, which would have been as easy a matter as to make him give me the limits of Canada in writing, which he could not have refused to do in virtue of the capitulation, and which would have rendered this act incontestible ; whilst having no signature to show, he can always make his party believe that we tried to over-reach him.

If I have misunderstood Your Excellency, I am very sorry, and make my apologies ; and when I sent the map to Your Excellency, and told you that the limits had been drawn by M. de Vaudreuil, I meant that they had been drawn under his own eyes and received his approbation, which is true to the letter.

I am further much pleased that [this disagreement] this ugly piece of chicanery of M. de Vaudreuil does not prejudice our affairs in the slightest ; but, on the other hand, it has given me a good lesson which I will remember, if at any future time I am fortunate enough to be able to put it into practice.

I have, Sir,

the honour to be,

with profound respect,

Your Excellency's most humble and most obedient servant,

FRED. HALDIMAND.

10th Xbre.

The negotiations between England and France were broken off in consequence of a proposal on the part of the Duc de Choiseul, to invade Spain, that had not yet been involved in the war, but was in sympathy with France, a party to the Treaty of Peace. Mr. Pitt declared in the name of His Majesty (George III.), that he would not suffer the disputes with Spain to be introduced into the negotiations between France and England. He said that he considered the proposal an affront to the king's dignity, and as incompatible with sincerity.

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He returned the memorial of the French minister. Mr. Pitt was not without enemies in the Cabinet ; and M. Bussy succeeded before leaving England in impressing many with the belief that a satisfactory peace would have been concluded, had it not been for the haughty manner and overbearing conduct of Mr. Pitt.*

The influence of Mr. Pitt visibly declined. In proportion as he was firm, were the representations of M. Bussy and the Duc de Choiseul believed. He divined with great sagacity the intentions of France and Spain. He insisted upon a more vigorous prosecution of the war against the former, and an immediate declaration of war against the latter. In this policy he was supported neither by his colleagues nor by the King, and he retired from office. It would have been scarcely necessary to refer to this correspondence if it had not been suggested that the line Mr. Pitt has here referred to as the western boundary of Canada by the capitulation of Montreal, was intended to be the western limit of the Province of Quebec by the Act of 1774. It is hoped that it has already been made sufficiently clear, that Canada had much more extended limits. It is also obvious, from the letter of General Haldimand to Sir Jeffrey Amherst, how this line came to be laid down as the western boundary of Canada. General Haldimand, in seeking to draw from the Marquis de Vaudreuil information which he was very unwilling to give, imposed upon himself. Being told that the Illinois country, which lay north of the Ohio and east of the Mississippi, was claimed both by Canada and Louisiana, but had been awarded to Louisiana, it seemed to have occurred to General Haldimand that he could not, upon the north side of the Ohio, claim the country to the westward beyond the Wabash and the height of land which separates the basin of Lakes Michigan and Superior from the basin of the Mississippi ; but upon the south side of the Ohio he claimed, from the Tennessee river westward, a part of Louisiana. The Marquis de Vaudreuil, seeing General Haldimand misled by a statement of his which was strictly accurate, did not deem it necessary to correct a mistake on the part of an enemy, whereby France would retain one-half of Canada. It may be that the Marquis de Vaudreuil told General Haldimand, as he says he did, that the line he drew included a part of Louisiana ; that the boundary of Louisiana extended to the portage of the Miami. But the fort at the portage had been garrisoned from Canada. It was under the jurisdiction of the Government of Canada ; and it was as well as Ouiatanon, on the Wabash, among the posts surrendered to General Amherst. Fort Du Quesne had fallen. The greater part of the valley of the Ohio was under the control of the English. Cahokia, next to Quebec, the strongest fort in America, was still in the hands of France. The line drawn by Haldimand was drawn without reference to the legal limits of Canada and Louisiana, and obviously in utter ignorance of those limits. The Marquis de Vaudreuil was not likely to contend very strongly for the retention of a part of the valley of the Ohio, which was already in the military possession of the English, when he found that by a very natural mistake his enemy was leaving to France a great extent of country, which, by the terms of capitulation, he might have properly claimed. The possession of the valley of the Ohio was one of the principal

* Lord Mahon's *Hist. England*, vol. IV, pp. 230-243 ; Entick's *History*, vol. V, pp. 156-196 ; *Parliamentary Debates*, from 1743 to 1774, in 7 vols., vol. IV, pp. 15-118 ; *Annual Register*, 1761 ; Adolphus *Hist. of England*, vol. I, pp. 1-106 ; *Bedford Correspondence*, vol. III.

causes of the war ; and when General Haldimand found that he had the valley of the Ohio as well as that of the St. Lawrence, it is not surprising that he did not seek to ascertain the extent of Canada. By the possession of the Ohio, the military cordon drawn about the English colonies was broken. The impediment to western extension was removed. The colonists could no longer be perpetually menaced, as heretofore, by an attack of French and Indians upon their western frontier.

In September, 1762, the Duke of Bedford was sent to Paris, and the Duc de Nivernois came to London, for the purpose of renewing the negotiations for the establishment of peace. Within two months preliminary articles were agreed to, and on the tenth of February, 1763, the Definitive Treaty of Peace between England, France and Spain was concluded at Paris.* By the second Article of this Treaty, the Treaties of Ryswick, Utrecht, Aix-la-Chapelle, and others, relating to the interests of France and England in America, were renewed and confirmed, subject to the provisions of the treaty thus negotiated.

Article IV. : " His Most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia or Acadia, in all its parts, and guarantees the whole of it, and with all its dependencies, to the King of Great Britain : moreover, His Most Christian Majesty cedes and guarantees to His said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the Gulf and River St. Lawrence, and, in general, everything that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty, under any pretence, or to disturb Great Britain in the possessions above mentioned. His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada ; he will, consequently, give the most precise and most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees that the French inhabitants, or others who had been subjects of the Most Christian King in Canada, may retire, with all safety and freedom, wherever they shall think proper, and may sell their estates, provided it be to subjects of His Britannic Majesty, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions : the term limited for this emigration, shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty."

Article VII.—" In order to re-establish peace on solid and durable foundations, and to remove for ever all subjects of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed, that, for the future, the confines between

* Entick's History, Vol. V, pp. 431-469.

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the dominions of his Britannic Majesty and those of his Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence, by a line drawn along the middle of this river, and the Lakes Maurepas and Pontchartrain, to the sea ; and for this purpose, the Most Christian King cedes in full right, and guarantees to His Britannic Majesty, the river and the port of the Mobile, and everything which he possesses, or ought to possess, on the left side of the River Mississippi, except the town of New Orleans, and the island on which it is situated, which shall remain to France ; provided, that the navigation of the River Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said island of New Orleans, and the right bank of that river, as well as the passage both in and out of its mouth : It is further stipulated, that the vessels belonging to the subjects of either nation, shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations inserted in the IVth Article in favour of the inhabitants of Canada, shall also take place, with regard to the inhabitants of the countries ceded by this Article."

WHAT ENGLAND ACQUIRED BY THE TREATY OF PARIS, AND WHAT FRANCE CEDED.

Under these Articles Great Britain acquired a right to all the country which the French possessed in America, except that portion which lay west of the Mississippi River. She was to have in full right Canada with all its dependencies. These words of general comprehension are limited by Article VII. which makes the Mississippi River from its mouth to its source, the western limit of Canada and its dependencies. But apart from this boundary, Canada extends under the English as far to the west and the north as it did while in the possession of France. It has already been shown that the country to the westward of the Mississippi and north of the Missouri River was a part of Canada, and that the territory south of the Missouri and the Ohio, together with the Illinois country, was embraced in the Province of Louisiana. By Article VII., just quoted, the western part of Canada as far north as the source of the Mississippi River was excepted from the cession, and retained by France ; and so much of Louisiana as lay upon the east side of the Mississippi River was ceded to Great Britain. France did not retain the whole of Louisiana, nor did she surrender the whole of Canada. It has already been shown that a large section of country lying north of the parallel and west of the meridian, drawn through the source of the Mississippi as far west as the Rocky Mountains, formed a part of Canada under the French. Looking at the two Articles of the Treaty of Paris, which have been quoted, to whom under that Treaty does this territory belong ? Unquestionably to Great Britain. The words of cession are, "Canada with all its dependencies." These words are general. They are as comprehensive as they can be. Standing by themselves, they convey not only all Canada, but all Louisiana, for Louisiana was at the time a dependency of Canada. There is, however, a restriction introduced. Upon the west, the Mississippi is made the limit of the ceded country, from the Gulf of Mexico to its source. But this limitation cannot be greater than what the words actually express. It extends

to the source of the Mississippi, and no farther. Whatever part of Canada lay farther to the north than that, was ceded. In other words, that part of Canada and Louisiana which lay to the west of the Mississippi—that is from the Gulf of Mexico to the parallel of 47° 38' 17" north latitude—was reserved to France; but all the country to the north of this parallel, as well as all east of the Mississippi River to the utmost extent of the French possessions, was ceded. The obvious conclusion from the words of the Treaty are borne out by Mr. Falconer in his work upon the north-western boundary. He says that, "As a subordinate province, partly formed out of Canada, Louisiana extended no further than the distinct boundaries of it could be shown; *secondly*, it never extended further north than the Illinois River; *thirdly*, Canada in its full extent was ceded to Great Britain; and *lastly*, the official map used by France in its negotiations with Great Britain, incontestably proves that the country north and north-west of the Mississippi was ceded as the Province of Canada."^{*}

POLICY OF THE ENGLISH GOVERNMENT IN REFERENCE TO THE NEWLY ACQUIRED TERRITORY.

Upon the seventh of October, 1763, the King issued a proclamation relating to the territory which had been gained from France and Spain by the Treaty of Paris. Out of the territories so acquired four Provinces were carved by Letters Patent granted under the Great Seal, three of which were on the Continent of North America, and one constituted from the Windward Islands. So much of the Proclamation as is pertinent in this case may be quoted here. It is as follows:—"Whereas, we have taken into our Royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris the tenth day of February last and being desirous that all our loving subjects, as well of our kingdoms, as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue thereupon to their commerce, manufactures, and navigation, *we have thought fit, with the advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said Privy Council, granted our Letters Patent, under our Great Seal of Great Britain, to erect within the Countries and Islands ceded and confirmed to us by the said treaty, four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz:—*

"First. The Government of Quebec, bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John to the south end of the Lake Nipissim; from whence the said line, crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of north latitude, passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coast of the Bayes des Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosiers, and from

^{*} Falconer's N. W. Boundary, etc., pp. 87, 88.

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thence, crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.

"And to the end that the open and free fishery of our subjects may be extended to, and carried on, upon the coast of Labrador and the adjacent islands, *we have thought fit, with the advice of our said Privy Council, to put all that coast, from the river St. John to Hudson's Straits, together with the Islands of Anticosti and the Magdeleine, and all smaller islands, lying upon the said coast, under the care and inspection of our Governor of Newfoundland.*

"We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

"And we do further declare it to be our Royal will and pleasure, *for the present*, as aforesaid, to reserve under our sovereignty, protection and dominion for the use of the said Indians, all the lands and territories not included within the limits of our said three new Governments, or within the limits of the and territory granted to the Hudson's Bay Company; *as also all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west, as aforesaid*; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatsoever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first obtained.

"And we do further strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements.

"And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs within the territories reserved as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who, standing charged with treasons, misprisons of treasons, murders or other felonies or misdemeanors, shall fly from justice, and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same."

These are the principal parts of the proclamation which make known what had been done in reference to Canada. A part was erected into the "Government of Quebec;" a part was "put under the care and inspection of the Governor of Newfoundland;" a part was annexed to the "Government of Nova Scotia;" and the remainder was "reserved for the present under the protection and dominion 'of the Crown' for the use of the Indians." All these changes were made,—alterations in the boundaries of several provinces which had been already constituted, and four new provinces formed,—by the exercise of the royal prerogative.¹

The Indians, during the seven years' war, had, for the most part, taken the side of the French. Six months before this proclamation was issued, the war with Pontiac began.

¹ The Royal Prerogative has been exercised in creating new Provisions or altering the boundaries of old ones, by Letters Patent by Orders in Council, and by Proclamations. Its exercise by a Commission to a Governor has been denied.

The policy of the English Government in reference to Indian affairs was still unsettled. Before the seven years' war began, an attempt was made to unite all the British colonies in North America in a Federal Union; and with a view to facilitate an arrangement of this kind, Indian affairs were taken out of the hands of the various provincial governments, and placed under the control of two superintendents,—one for the north and the other for the south. The consummation of this plan of union having fallen through, Indian affairs still continued to be managed by two superintendents, who were made responsible to the Lords of Trade and Plantations. But little change, however, was immediately affected in the policy which had long been pursued towards the Indians. Sir William Johnson, the Northern Superintendent of Indian affairs, in a letter to the Lords of Trade, written in November, 1763, says: "I apprehend that it will clearly appear to you that the colonies had all along neglected to cultivate a proper understanding with the Indians; and from a mistaken notion have greatly despised them, without considering that it is in their power to lay waste and destroy the frontiers." The English settlers were mostly agriculturists. They took possession of the soil, cleared away the forests, and, so far as they occupied the country, supplanted the Indians.

Nor were they disposed to consult the claims of the aboriginal population. Fraudulent interpretations were put upon English conveyances, and claims were made to lands the titles to which the Indians had never parted with.

Mr. Charles Thompson, in a tract published in 1759, entitled "The Causes of the Alienation of the Delawares and Shawanese," gives many instances of the dishonest way in which the Indians were treated. In 1737 a deed, which, if made at all, had been made by the Indians half a century before, and which certainly had been superseded by a subsequent arrangement, was brought to light. This deed professed to convey all the lands on the right bank of the Delaware, bounded by a line drawn from a certain point on Neshawiney Creek, in a north-westerly direction as far as a man could walk in a day and a half, and from the end of this walk by a line drawn *eastward* to the River Delaware. The proprietors of this sham purchase employed active men and caused them to undergo special training for the walk. They removed every obstruction from the way. An immense distance was gone over in the allotted time; and when the northern limit of this "Walking Purchase" was reached, the line extending to the Delaware was inclined as much as possible to the north. The Indians were enraged and alarmed by the proceeding. The territory marked out embraced the country in which their corn-fields were situated, and upon which their villages were erected, and they refused to surrender their lands. The Delawares had been subjugated by the Iroquois Confederacy before Penn's arrival in America. When the Delawares refused to leave, the Iroquois were sent for. A number of their chiefs appeared at Philadelphia. The most plausible account on the part of the whites was related to them; and they at once ordered the Delawares to depart. The Delawares knew the consequence of disregarding the commands of the Iroquois; and they did not feel themselves at liberty to disobey this peremptory order. Their fields of corn were but half grown when they were compelled to quit their ancient possessions. A part of them settled at Shamokin, and a part at Wyoming; but they soon afterwards, along with the Shawanese tribe, removed to the Alleghany and Muskingham Rivers, where they were won over to the French cause by the liberal presents of Jonquiere,

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and the friendly treatment of the French traders ; so that in the war which was closed by the Treaty of Aix-la-Chapelle, in 1748, the Indians were found on the side of the French.

Between 1740 and 1750 the English traders first found their way to the Ohio. In 1744 the treaty was made between the Six Nations and the Provinces of Maryland, Pennsylvania and Virginia, at Lancaster, by which these Indians received a few hundred pounds in money and goods for the lands west of the mountains, which were in the possession of Indians whom the Iroquois had at one time subjugated, but whom now, being sustained by the French, they could no longer control.* In 1750 the Ohio Company, to whose grant reference has before been made, sent an adventurous frontiers-man, Christopher Gist, to explore the valley of the Ohio. He passed through the country of the Delawares, and some villages of the Ottawas and the Mingoes. George Croghan, on behalf of the Province of Pennsylvania, explored the country on the north side of the Ohio as far as the Miami River. Under the Treaty of Lancaster, Virginia claimed the right to appropriate all the lands as far west as the Mississippi. In June, 1752, the Commissioners of Virginia met the Indians of the Ohio at Logstown, a little village seventeen miles below Pittsburg, on the right bank of the Ohio. The Indians denied that any sale had been made to the west of the warriors' path, which lay at the western foot of the mountains. They declined to have anything to do with the Treaty of Lancaster. The Chiefs of the Six Nations present, denied that the Treaty of Lancaster had been made with their sanction. They said "it was not their custom to treat of such affairs in the woods and among the weeds." But Montour, one of their chiefs, was bribed to use his influence with the others to secure its confirmation, and this was done. But the various tribes whose interests were affected, and whose rights were disregarded, were greatly exasperated.†

In September, 1753, William Fairfax met their deputies at Winchester, in Virginia, and entered into a treaty with them ; but such was their feeling of hostility that he dared not to mention to them either the Lancaster or Logstown Treaty.

There were many public men in England who were opposed to permitting any settlements west of the Alleghanies. They favoured this policy not only to avoid trouble with the Indians, but to perpetuate the dependence of the colonies upon the mother country. Gen. Murray advised the English Government to make Canada a military colony, and to extend it westward to the Mississippi, in order to overawe the old colonists. Lord Shelburne recommended the limits which were shortly afterwards named in the proclamation for the government of Quebec. The Earl of Egremont insisted on the Mississippi as the western limit. On the 19th September, 1763, Lord Egremont wrote to the Lord of Trade and Plantations, that "His Majesty is pleased to lay aside the idea of including within the government of Canada the lands which are to be reserved for the

* Craig's Olden Time. Albach's Annals. Croghan's Diary. Posts Journal. N. Y. Hist. Doc. Bancroft's Hist., vol. III. Archives de Paris, 1ère Série, vols. VIII., IX., X.

† Albach's Annals. Parkman's War with Pontiac, vol. I. Proud's Pennsylvania. N. Y. Hist. Col., vol. VIII. Bancroft's History, vol. III.

present for the use of the Indians."* But whatever view might be adopted, it was not likely to allay the distrust which prevailed in the minds of the Indians. In the war, the French proved that they best understood how to manage them. The Indians said that the French treated them with kindness, while the English settled upon their lands for their own benefit, destroyed their hunting grounds, and left them exposed to the vengeance of their enemies, without arms and without the necessary means of effective resistance. They complained that both Washington and Braddock had received their offers of support with indifference, and sometimes with disdain, and, instead of using them as allies, had abused them as slaves. The Indians said that the French had not sought to bully them into obedience; they had not ruined their hunting grounds nor robbed them of their lands. And all the tribes from Lake Superior to the Gulf of Mexico had united under Pontiac to expel the English from the country west of the Alleghany mountains. These long-continued complaints of the Indians, which were not unknown in England, made a strong impression upon the minds of many British statesmen, who were disposed to adopt a more friendly policy towards the savages. But at the time the proclamation of 1763 was issued nothing had been permanently settled.†

In 1764 the English Ministry had in contemplation an Act for the better regulation of the fur trade. They purposed, by a duty upon that trade, raising a sufficient revenue to pay the salaries of officials and to meet other expenses incurred by the Indian Department; they purposed naming several places where the trade might be carried on; and they contemplated the removal of the French from the Indian Territory.‡ Had this scheme been carried out, the Indians would have been obliged to bring all their peltries for sale to the posts where alone this trade was to be permitted. The Government had resolved on acquiring more territories from the Indians, so as to remove the boundary between the colonists and the savages beyond the lands upon which any white man had a claim. Upon the Indian side of this new boundary, no settlements were to be made. In consequence of this determination, instructions were transmitted to the Northern Superintendent of Indian Affairs, directing him to call a council of the Indians, and informing him that it was desirable to establish a boundary by treaty with the Indians to the west of the territory upon which any private claims had been created, either by grants from the Crown or by actual occupation, and that beyond this boundary the colonists were not to be permitted to go. Sir William Johnson was instructed to convoke a meeting of the Chiefs and Indians interested, and to submit to their consideration a proposition to give effect to this policy. He accordingly did so. A convention was held with them at Johnson's Hall, in May, 1765.§ The Indian war was at

* N. Y. Hist. Doc., Vol. VIII. Spark's Franklin, Vol. IV. M. Francis au Choiseul, 2 Sep. 1768. Lords of Trade to Secretary of State, 8 June, 1763, and 5 Aug., 1763. Secretary of State to Lords of Trade, 14th July, 1763, and 19th Sep., 1763.

† Various papers in the New York Hist. Doc. Parkman's Pontiac's Conspiracy. Thompson's Cause of the Alienation of the Delawares and Shawanese. Plain Facts.

‡ This promise was made to the Six Nations before the conquest of Canada. The French forts at Frontenac, Toronto, Niagara, Detroit and Miami, had checked the murdering incursions of the Iroquois, and they wanted the French, of whom they were afraid, removed; but when Canada was ceded, the English had an Indian population ten times more numerous than the Six Nations, whose interests and whose feelings they could not wholly disregard.

§ New York Hist. Doc., vol. VIII. Proud's Hist. Pennsylvania, vol. II.

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an end. He informed the Indians that the King, whose generosity and forgiveness they had already experienced, being very desirous of putting an end to the disputes between them and his people concerning lands, and being desirous, at the same time, of doing them strict justice, had authorized him to propose a plan of boundary as the best method of accomplishing this object. He told them that the settling of such a division line would be best both for White men and Indians, and that it would be such a line as would best agree with the extent and increase of each province. He wanted to know in what manner they would choose to extend it, and what they would heartily agree to and abide by, in general terms. He informed them that he would consult the Governors of the Provinces that were interested as soon as he was fully empowered to do so; that whenever the whole would be settled, and it appeared that they had so far consulted the increasing state of the colonists as to make suitable concessions of territory where it was most wanted, they would then receive a considerable present in return for their friendship. The Indians agreed to a proposal for a new boundary line. Within three years thirty thousand whites crossed the mountains, and settled upon the territory which it was contemplated to purchase. A change of administration had taken place in England. The contemplated measure for establishing a boundary and regulating the Indian trade was not brought forward. The letters of Sir William Johnson were mislaid by ministers, and he received no instructions enabling him to fulfil his engagements with the Indians. The Indians finding their country everywhere invaded, began to believe that they had been duped by the fair promises made by the Northern Superintendent. A border war was on the point of breaking out along the whole frontier. Many persons were massacred. Some of the traders, among whom were found many thieves and cut-throats, shot whole families of Indians. In 1766, a detachment of soldiers were sent to Red Stone Creek and Cheat River to remove those who had settled at these places. On the 7th of December, 1767, General Gage, who was at the time Commander-in-Chief of the British forces in North America, wrote to the Governor of Pennsylvania on the subject of the Indian grievances, and the little regard paid by the western settlers to the several proclamations which had been published, forbidding any one settling upon lands which had not been surrendered by the Indians. He says that the removal of those who had settled at Red Stone Creek and Cheat River has been only a temporary expedient, as they had returned again to the same encroachments in greater numbers than ever. The Governor of Pennsylvania communicated General Gage's letter to the Assembly of that Province on the 5th of January, 1768, and eight days later the Assembly presented a reply to the Governor. On the 19th the Speaker of the Assembly and the Committee of Correspondence informed the London agents by order of the House, "That the delay of the confirmation of the boundary, the natives had warmly complained of, and that, although they have received no consideration for the lands agreed to be ceded to the Crown on our side of the boundary, yet that its subjects were daily settling and occupying these very lands."

The Legislature of Pennsylvania, finding that the Indians were, as time advanced, becoming more and more inclined to war on account of the unauthorized encroachments upon their lands, and not doubting that orders would soon arrive from England to confirm the inchoate treaty of May, 1765, voted £1000 to purchase presents for the Indians on

the Ohio. The conference was held at Fort Pitt in the spring of 1768. The Indians were in no friendly mood. They said that the wrongs done them had long been known, and were still unredressed; that emigration into their country was unchecked; that they were daily being extended further into their territory, and that some of these settlements were upon their war-path; that the English had laws to govern their people, and that it would be a strong proof of the sincerity of their friendship if they would remove the settlers from their lands. "It will be time enough," said the Indians, "for them to settle the lands after they have purchased them."*

As soon as Sir William Johnson received orders from England relative to a treaty with the Indians, he at once took the necessary steps to secure a full attendance from the various tribes interested. Notice was given to the Colonial Governments whose territories extended to the Indian frontier, and to the Six Nations, the Shawanese and the Delawares. A congress was appointed to meet, in October, at Fort Stanwix. It was attended by Sir William Johnson and his deputies, by representatives from Virginia, Pennsylvania, New York, and New Jersey, and by the agents of the traders who had suffered in the war of Pontiac, and by deputies from the Indian tribes interested. On the 1st of November, a line was agreed upon, beginning at the North where Canada Creek joins Wood Creek east of Lake Oneida; up that creek to Burnett's Hills; west along these hills to the Susquehanna River, and up the west branch of that river to the point nearest to Kittanning, thence to Kittanning on the Alleghany, and thence down the Ohio to Cherokee. At the mouth of the Kanawha River it met the line of Stuart's Treaty with the Cherokee. Beyond this line Sir William Johnson was instructed not to go, as it was Lord Hillsborough's policy to form an unbroken line of Indian frontier from the Gulf of Mexico to Lake Ontario as an impassable barrier to the westward extension of Colonial settlement. The Six Nations, as well as the Cherokees, claimed the country between the Kanawha and Cherokee (Tennessee) Rivers, and the Northern Superintendent deemed it prudent to extinguish their claims to all lands between the Mountains and the Ohio River.¹

One deed for a part of this land was made on the 3rd of November, to William Trent, attorney for twenty-two traders whose goods the Indians had destroyed during the war with Pontiac. This grant of land extended from the Monongahela to the Kanawha, and was called by the traders, Indiana. Two days later, a deed was made to the King of the remainder. The Indians were at once paid. The Chiefs of the Six Nations signed for themselves, their allies, and dependants. The Shawanese and the Delaware deputies did not sign the deed, as the Six Nations did not recognise them as having any interest to convey. By this Treaty the western boundary of the territory thrown open for settlement

* Colonial Archives, Pennsylvania,

† N. Y. Hist. Doc. vol. VIII.

¹ The orders of Lord Hillsborough were, to form an unbroken line of Indian frontier from the St. Lawrence to Mobile, as an impassable barrier to emigration. Instructions were repeatedly given to the Indian Superintendents for the completion of this barrier line. Stuart, the Southern Superintendent, was expressly enjoined not to accept any new cession of territory from the Cherokees. Sir William Johnson, the Northern Superintendent, by disregarding his instructions, and accepting a surrender between the Kanawha and Cherokee Rivers, opened for settlement a country which, by the Treaty at Hard Labour with the Cherokees, was recognised as their possession. See Bancroft's History, vol. V. chap. 33, where the authorities are cited. See also, Public Lands, vol. II. p. 208, American State Papers.

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* Craig's Old
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along the border of the middle colonies, was removed "from the sources of the rivers which fall into the sea, from the west and the north-west," where it was "for the present," fixed by the Royal Proclamation of the seventh of October, 1763, to the Ohio River. West of this new boundary, the country was still held by the Crown for the use of the Indians.*

The western part of Virginia became at once the chief matter of interest to the people of that province. Lord Botetourt, who, not long before, had become governor of that province, cordially seconded the wishes of its people, and declared that he was ready to put in pledge his life and fortune to carry its jurisdiction on the parallel of $36\frac{1}{2}$ degrees of north latitude, as far west as the Treaty of Fort Stanwix would permit. This extension of territory, it was said, would give room for settlement for ten or twelve years.

How that part of Canada, known as the Indian Territories, should be dealt with, had, from the time of its acquisition, been a matter of earnest discussion on both sides of the Atlantic. Numerous recommendations were made by Governors, by the Indian Superintendents, and others, to the Ministers and Lords of Trade and Plantations. Col. Geo. Croghan, the Deputy of Sir William Johnson, the Northern Superintendent of Indian affairs, having gone to England during the Pontiac war, was recommended by his chief to the Lords of Trade, as a person whose thorough acquaintance with Indian affairs would enable him to impart to the Board much valuable information. Mr. Croghan was better acquainted with the Indians than any other man in the English interests.

While in England he recommended the adoption of the boundary between the Indians and the Colonists, which was subsequently agreed upon at Fort Stanwix. He says: "The Indians, before the late war or the conquest of Quebec, considered us in the light of a counterpoise to the power of the French, their ancient enemies, and were steady friends of the English on that account; but since the reduction of Canada, they consider us in a very different and less favourable light, as they are now become exceedingly jealous of our growing power in that country. It is not necessary to enter into any part of our conduct towards them since the reduction of Canada, which might have raised their jealousies, or whether the French used any measures to spirit them up to what they have done; we know them now to be a very jealous people, and to have the highest notions of liberty of any people on earth, and a people who will never consider consequences where they think their liberty likely to be invaded, though it may end in their ruin; so that all that can be done now is to prevent such a defection of the Indians for the future, by the boundary and good treatment.

"By the concessions made by His Majesty at the Treaty of Peace, the country lying west of the Ohio to its mouth, and up the Mississippi to its sources, appears to be the boundary between the French and us in that part of the country, and of course becomes our frontiers. As the west side of the Mississippi will, no doubt, be settled by the French, I would offer to your Lordship's consideration, whether it would not be good policy at this time, while we certainly have it in our power, to secure all the advantages we have got there by making a purchase of the Indians inhabiting the country along the Mississippi, from the mouth of

* Craig's Olden Time, Vol. I; Plain Facts, p. 120. The Lords of Trade to Sir William Johnson, N. Y. Hist. Doc. Vol. VIII. pp. 637 et seq; Lords of Trade to Earl Shelburne, N. Y. Hist. Doc. Vol. VIII. p. 1005; Franklin's reply to Lords of Trade; Spark's Franklin, Vol. IV. N. Y. Hist. Doc. Vol. VII. pp. 803-4.

the Ohio up to the sources of the Illinois, and there plant a respectable colony in order to secure our frontiers and prevent the French from any attempt to rival us in the fur trade with the natives, by drawing the Ohio and Lake Indians over the Mississippi, which they have already attempted, by the last accounts we have from Detroit.

"From planting this new colony many great advantages would arise to this kingdom, as well as to His Majesty's subjects in North America; it would extend trade and commerce with the furthestmost nations of western Indians hitherto unknown to us, which would enable the trading people in the colonies to import more of the manufactures of this kingdom than they have heretofore done, which is an object of the greatest consequence to a trading people; it would extend His Majesty's settlements in America, and make his subjects appear more formidable in the eyes of the Indians, which is now become absolutely necessary in order to preserve the peace between them and us; it would cut off all the communication between the French and those nations settled over the large tract of country on this side of the Mississippi, and give us the absolute dominion over all the upper lakes—Huron, Michigan, Superior,—and bid fair to give a lasting peace to all His Majesty's southern colonies. Besides, from this colony in a very few years we should be able to supply with provisions of every kind the several posts or marts that may be erected for trade with the natives, on much easier terms than they have or can be supplied from any of our colonies. At present it may be objected that the establishing of such a colony, so far from the sea, will be attended with too great an expense to the nation, which may be easily answered. The fertility of the country and the fineness of the climate are now known to us, which is sufficient to encourage industrious people to settle in it in a very little time without any expense to the nation, or hindrance to the growth of the present colonies; and I daresay that people enough will be found that will undertake it."*

Sir Wm. Johnson also pressed a similar policy upon the attention of the Government. He urged the establishment of a colony in the Illinois country. He describes the settlements along the Mississippi; he speaks of the jealousy and hostility of the French population. He says: "Some of the present inhabitants may possibly incline to go home; and our traders will, I daresay, choose to purchase their rights. This may be the foundation for a valuable colony in that country; which, once established, would prove very beneficial to Great Britain, as well as a great check to the large cessions obtained of the natives."†

In 1766, Dr. Franklin went to England to secure what was called the Walpole Grant, and while there to press upon the attention of the Government a scheme for the acquisition, by Gen. Gage, Sir William Johnson, William Franklin—then governor of New Jersey—and several fur-traders of Philadelphia, of the whole country from Lake Erie to the Mississippi, and from the Wabash and Miami Rivers, north to the Fox and Wisconsin Rivers. This tract embraced upwards of sixty millions of acres. The company wished to establish a colony, and to undertake its government. The letters of Franklin to his son show very clearly the unsettled and conflicting views held by English statesmen in reference to the government of Western Canada. More than sixty British officers who had served in the West during Pontiac's war, addressed a petition to the British Government for leave to settle upwards of six

* N. Y. Hist. Doc., vol. VII. pp. 603, 604.

† N. Y. Hist. Doc., vol. VIII.; Stone's Life of Sir Wm. Johnson; Doc. Hist. N. York, vol. I.

hundred families, at their own expense, in the Illinois country. In September, 1766, Dr. Franklin writes to his son as follows :—"I have just received Sir William's (Sir Wm. Johnson) open letter to Secretary Conway, recommending your plan for a colony in the Illinois, which I am glad of. I have closed and sent it to him. He is not now in that Department ; but it will of course go to Lord Shelburne, whose good opinion of it I have reason to hope for ; and I think Mr. Conway was rather against distant posts and settlements in America. We have, however, suffered a loss in Lord Dartmouth, who, I know, was inclined to grants there in favour of the soldiery ; and Lord Hillsborough is said to be terribly afraid of dispeopling Ireland. General Lyman has been long here soliciting such a grant, and will readily join the interest he has made with ours ; and I should wish for a body of Connecticut settlers rather than all from our frontiers. I propose waiting on Lord Shelburne on Tuesday . . .

. . . A good deal, I imagine, will depend upon the account, when it arrives, of Mr. Croghan's negotiation in that country. . . . The plan is, I think, well drawn, and I imagine Sir William's approbation will go a great way in recommending it, as he is much relied on in all affairs that may have any relation to the Indians." On the 27th of the same month Dr. Franklin again writes : "I have mentioned the Illinois affair to Lord Shelburne. His lordship has read your plan for establishing a colony there, recommended by Sir Wm. Johnson, and said it appeared to him a reasonable scheme, but he found it did not quite rate with the sentiments of people here ; that their objections to it were the distance which would make it of little use to this country, as the expense on the carriage of goods would oblige the people to manufacture for themselves ; that it would for the same reason be difficult both to defend it and to govern it ; that it might lay the foundation of a power in the heart of America, which in time might be troublesome to the other colonies, and prejudicial to our government over them, and the people were wanted both here and in the already settled colonies, so that none could be spared for a new colony. These arguments, he said, did not appear of much weight, and I endeavoured by others to invalidate them entirely. . . . I communicated to him two letters of Mr. Croghan's, with his journal. . . . I left with him one of Evans' maps of the middle colonies, in the small scale part of which I had marked with a wash of red ink the whole country included in your boundaries. His lordship remarked that this would coincide with Gen. Lyman's project, and that they might be united." On the 30th of September he again writes : "I have just had a visit from Gen. Lyman, and a good deal of conversation on the Illinois scheme. He tells me that Mr. Morgan, who is Under Secretary of the Southern Department, is much pleased with it, and we are to go together to talk to him concerning it." It would seem from the letters of Franklin to his son, that Ministers sought information from various sources in reference to the establishment of a colony in the Illinois country ; that the opinions they obtained were generally favourable to the scheme, but that they were deterred from doing so for various reason, the principal of which was the expense likely to be created. They had become tired of the enormous charges entailed in the management of Indian affairs ; they contemplated the return of this management into the hands of the several colonies interested, in order that each province might bear the charge of treaties with the Indians so far as it concerned its own interests. Dr. Franklin pointed out to Lord Shelburne and others, that the settlement of the Illinois country would effect an immense saving in the expense of supporting the military posts in Western Canada

that it would retain the trade and increase the strength of England in the west ; that in case of war it would furnish a population which could be poured down the Mississippi upon the West India Islands ; and that it need entail but little expense upon the government. Lord Shelburne had delayed bringing the scheme for new colonies up in Council until he thought the Lords of Trade might be induced to give it their support. On the 5th Oct., 1767, he addressed a letter to the Lords of Trade in which he enclosed various memorials and petitions which had been presented to the King from English and Colonial merchants. In the unsatisfactory state of the Indian trade, he suggested the abolition of the Indian Department, which had been created (as already remarked) at a time when a general union of the colonies was contemplated, in order the better to resist the encroachments of France. He expressed the opinion that both the trade with the Indians and the general management of Indian affairs could be better left to the different colonies, subject to the King's disallowance. Addressing himself to the subject of establishing new colonies, he says,—“ His Majesty likewise commands me to refer to your Lordships' extracts from several letters of Sir Jeffrey Amherst and Gen. Gage recommending the establishment of further new governments on the Mississippi, the Ohio, and at Detroit, at one or more which places a considerable body of French have been suffered to remain since the peace without any form of government ; also different proposals from people for undertaking establishments in these parts. Your Lordships will consider the force of the several arguments which are brought in favour of these settlements, setting forth that they will secure to His Majesty's subjects the command of the fur and peltry trade, in preference to the French and Spaniards—preventing any smuggling with them, which, as appears by the extracts of General Gage's and Mr. Croghan's letters, amounts to so considerable a sum annually as to become a national object ; that they will be an effectual check to the intrigues of those nations for gaining the affections of the Indians ; that they will promote the object of population in general, and increase the demand for the consumption of British manufactures, particularly by affording the Americans an opportunity of following their natural bent for the cultivation of the lands, and offering a convenient reception for their superfluous hands, who otherwise, cooped up in narrow bounds, might be forced into manufactures to rival the mother country—an event which, any other way, it might be difficult to prevent ; that by raising provisions of all sorts to supply such interior garrisons as it may still be found necessary to keep up, they would greatly contribute to lessen the extraordinary expense accruing not only from the establishment of the different forts, and the various contingent charges, but also from the necessity of transporting provisions as well as stores to supply the garrisons from the Provinces on the coast, by the rivers and by the great lakes, as well as by the land portage, all which not only occasion an accumulated expense, but also often reduces the garrisons to great distress, and in case of an Indian war, when alone they can be useful, leaving them in a very precarious situation ; that these new colonies will prove in effect a protection and a security to the old, forming of themselves an exterior line of defence, contributing to reduce the present Indian and military expense ; that being situated behind the other Provinces, they will be of singular use to keep the Indians in awe, and prevent their hostile incursions upon the frontiers to the eastward, while those savages who are hemmed in by our settlements on both sides, must either become domiciliated and reconciled to our laws and manners, or be obliged to retire to a distance.

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"In case your Lordships should think it right to advise His Majesty to establish these new Governments, you will consider whether it will be practicable to fall upon such a plan as will avoid a great part of the expense incurred by the estimates of the new Governments established after the peace."

On the 13th of November, Dr. Franklin writes, "The King in Council referred the proposal (for new colonies) to the Board of Trade, who called for the opinion of the merchants on two points, viz. whether the settlement of colonies in the Illinois country and at Detroit might not contribute to promote and extend the commerce of Great Britain; and whether the regulation of the Indian trade might not be best left to the several colonies that carry on such trade, both which questions they considered at a meeting where Mr. Jackson and I were present, and answered in the affirmative unanimously, delivering their report accordingly to the Board." The Lords of Trade and Plantations made no report until March, 1768. In the meantime, great changes were made in the Ministry, and in the Departments of Government. The affairs of the colonies were taken from under the control of Lord Shelburne and consigned to a separate Department of State, of which Lord Hillsborough was made the head.

The changes which then took place in the Ministry were followed by a change in the colonial policy. The conflict with the colonies in reference to the subject of taxation was begun. It was about this time that the Lords of Trade returned to the consideration of Lord Shelburne's letter and the answer of the London merchants. The Report, when made, was decidedly adverse to the policy of establishing new colonies. They say that "the proposition of forming inland colonies in America is, we humbly conceive, entirely new; it adopts principles in respect to American settlements different from what have hitherto been the policy of this kingdom, and leads to a system which, if pursued through all its consequences, is, in the present state of that country, of the greatest importance.

"The great object of colonizing upon the continent of North America, has been to improve and extend the commerce, navigation and manufactures of this kingdom, upon which its strength and security depend.

"1. By promoting the advantageous fishery carried on upon the northern coast.

"2. By encouraging the growth and culture of naval stores, and of raw materials, to be transported hither in exchange for perfect manufactures and other merchandise.

"3. By securing a supply of lumber, provisions and other necessities for the support of our establishments in the American Islands.

"In order to answer these salutary purposes, it has been the policy of this kingdom to confine her settlements as much as possible to the sea coast, and not to extend them to places inaccessible to shipping, and consequently more out of the reach of commerce; a plan which, at the same time that it secured the attainment of these commercial objects, had the further political advantage of guarding against all interfering of foreign powers, and of enabling this kingdom to keep up a superior naval force in those seas by the actual possession of such rivers and harbours as were proper stations for fleets in time of war.

It was upon these principles that the Government undertook the settling of Nova Scotia, in 1749; and it was from the view of the advantages represented to arise from it in these different articles, that it was so liberally supported by the aid of Parliament.

"The same motives, though operating in a less degree and applying to fewer objects, did, as we humbly conceive, induce the former colonies of Georgia, East Florida, and West Florida, to the south, and the making those provisional arrangements in the proclamation of 1763, by which the interior country was left to the possession of the Indians."

This policy, they say, would be defeated by adopting the recommendations of Lord Shelburne, and forming settlements in the interior of the continent, "more especially where every advantage derived from an established government, would naturally tend to draw the stream of population; fertility of soil and temperature of climate offering superior incitement to settlers, who, exposed to few hardships and struggling with few difficulties, could, with little labour, earn an abundance for their own wants, but without a possibility of supplying ours with any considerable quantities. Nor would these inducements be confined in their operation to foreign immigrants determining their choice where to settle, but would act most powerfully upon the inhabitants of the northern and southern portions of your Majesty's American dominions, who, ever suffering under the opposite extremes of heat and cold, would be equally tempted by moderate climate to abandon latitudes peculiarly adapted to the production of those things which are by nature denied to us, and for the whole of which we should, without their assistance, stand indebted to and dependent upon other countries."* They observe that before 1749 the sea coast of the Empire in America, from the Province of Maine to the mouth of the *St. Lawrence*, had been neglected, although it abounded in every species of naval stores; that France had, at an immense expense, attempted, by the war which ended at that period, to wrest the country from Great Britain; that, aware of its great commercial value, the country was held, and to further this end and make the possession more sure, the settlement of Nova Scotia had been promoted, though at a very great expense to the kingdom; that in consequence of great commercial advantages to be derived from a settlement of the north-eastern coast, associations had been formed for the purpose. 10,000 persons had gone from the other provinces to settle in Nova Scotia, who had either engaged in the fisheries or become exporters of lumber and provisions to the West Indies, and that many of the principal persons of the Province of Pennsylvania were engaged in the settlement of twenty-one townships of 100,000 acres each in Nova Scotia; that the success of these settlements had given encouragement to like settlements in Maine and Massachusetts, in the Islands of St. John and Cape Breton, and in the Floridas. The Lords of Trade and Plantations say, "they are, therefore, fully convinced that the encouraging settlements upon the sea coast of North America are founded in the true principles of commercial policy, as we find upon examination that the happy effects of that policy are now beginning to open themselves in the establishment of these branches of commerce, culture, and navigation upon which the strength, wealth, and security of this kingdom depend; we cannot be of opinion that it would in any view be advisable to divert your Majesty's subjects in America from the pursuit of those important objects, by adopting measures of a new policy at an expense to this kingdom, which, in its present state, it is unable to bear."

They next proceed to consider the arguments in support of the new governments

* North American Pamphlets. Library of Parliament, vol X.

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recommended by Lord Shelburne and others, which are reducible to the following propositions:—

“1st. That such colonies will promote population and increase the demand for and consumption of British manufactures.

“2nd. That they will secure the fur trade and prevent an illicit trade, or interfering of French or Spaniards with the Indians.

“3rd. That they will be a defence and protection to the old colonies against the Indians.

“4th. That they will contribute to lessen the present heavy expense of supplying provisions to the different forts and garrisons.

“5th. That they are necessary in respect to the inhabitants already residing in those places where they are proposed to be established who require some form of civil government.

“We admit as an undeniable principle of true policy, that with a view to prevent manufactures it is necessary and proper to open an extent of territory for colonization proportioned to the increase of people, as a large number of inhabitants, cooped up in narrow limits, without a sufficiency of land for produce, would be compelled to convert their attention and industry to manufactures; but we submit whether the encouragement given to the settlement of the colonies upon the sea coast, and the effect which such encouragement has had, have not already effectually provided for this object, as well as increasing the demand for and consumption of British manufactures—an advantage which, in our humble opinion, would not be promoted by these new colonies, which being proposed to be established, at the distance of above fifteen hundred miles from the sea, and in places which, upon the fullest evidence, are found to be utterly inaccessible to shipping, will, from their inability to find returns wherewith to pay for the manufactures of Great Britain, be probably led to manufacture for themselves; a consequence which experience shows has constantly attended in a greater or less degree every inland settlement, and, therefore, ought, in our humble opinion, to be carefully guarded against by encouraging the settlement of that extensive tract of sea coast hitherto unoccupied; which, together with the liberty that the middle colonies will have (in consequence of the proposed boundary line with the Indians) of gradually extending themselves backwards, will more effectually and beneficially answer the object of encouraging population and consumption than the erection of new governments; such gradual extension might, through the medium of a continued population, upon even the same extent of territory, preserve a communication of mutual commercial benefits between its extremest parts and Great Britain, impossible to exist in colonies separated by immense tracts of unpeopled desert.

“As to the effect which it is supposed the colonies may have to increase and promote the fur trade, and to prevent all contraband trade or intercourse between the Indians under His Majesty's protection, and the French or Spaniards; it does appear to us that the extension of the fur trade depends entirely upon the Indians being undisturbed in the possession of their hunting grounds; that all colonising does in its nature, and must in its consequences, operate to the prejudice of this branch of commerce, and that the French and Spaniards would be left in possession of a great part of what remained, as New Orleans would still continue the best and surest market.

"As to the protection which it is supposed these new colonies may be capable of affording the old ones, it will, in our opinion appear, on the slightest view of this situation, that so far from affording protection to the old colonies they will stand most in need of it themselves.

"It cannot be denied, that new colonies would be of advantage in raising provisions for the supply of such forts and garrisons as may be kept up in the neighbourhood of them, but as the degree of utility will be proportioned to the number and situation of these forts and garrisons, which upon the result of the present enquiry it may be thought advisable to continue, so the force of the argument will depend upon that event.

"The present French inhabitants in the neighbourhood of the lakes will, in our humble opinion, be sufficient to furnish with provisions whatever posts may be necessary to be continued there; and as there are also French inhabitants settled in some parts of the country lying upon the Mississippi between the Rivers Illinois and the Ohio, it is to be hoped that a sufficient number of these may be induced to fix their abode, where the same convenience and advantage may be derived from them.

"The settlements already existing as above described, which being formed under military establishments, and ever subject to military authority, do not, in our humble opinion, require any further superintendence than that of the military officers commanding at these forts."

This report is important, because it indicated the policy not only of the Lords of Trade and Plantations for the time being, but also the policy that was adopted towards the North American colonies until the civil war began. These views had not always been held. The conquest of Canada made a great change. A dangerous rival had been removed from the borders of the colonists. They did not feel their dependence upon England, as they had done while the French were to the west and the north of them. The policy which sought to promote the interests of the subjects of the Crown in England, at the expense of the subjects of the Crown in America, was certain to be resisted. After the Treaty of Aix-la-Chapelle was concluded, which settled nothing, the British ministry felt that it would be necessary to accomplish, by a vigorous colonial policy, what they had failed to accomplish by treaty. In 1748, the Lords of Trade and Plantations reported to His Majesty's Most Honourable Privy Council, "that the settlement of the country lying westward of the Great Mountains, as it was the centre of the British Dominions, would be for His Majesty's interest and the advantage and security of Virginia and the neighbouring colonies." And when the grant to Hanbury, Lee, and others, was asked for, they say that they had "fully set forth the great utility and advantage of extending our settlements beyond the great mountains, (which report has been approved of by your Lordships). And as by these new proposals there is a great probability of having a much larger tract of the said country settled than under the former, we are of opinion that it will be greatly for His Majesty's service, and the welfare and security of Virginia, to comply with the prayer of the petition."

The change in the policy of the English Ministry was no doubt due to the altered circumstances. In 1748 England was anxious to get possession of the valley of the Ohio. The French had discovered that river and explored the adjacent country. They, for many years, were kept away from the country above the Scioto River, by fear of the Six Nations. It was from the Six Nations that England professed to have acquired a title.

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Her public men knew that no such title would be recognized by France as paramount to discovery and occupation. It was not upon any such title that the States of Western Europe based their claim to the parts of the continent in which they had established colonies. Lord Halifax knew that if numerous bands of settlers crossed the mountains, the country in which they settled must remain to England. Experience had so far shown that the axe and the plough gave practically a better title than the burial of lead plates, and the establishment of a few military posts. In her contests with France, the colonists of England were her best allies. They fought with her, and for her, and victory crowned their united efforts. They won from France a country many times larger than the country which they held before the seven years' war began. France ceded her possessions west of the Mississippi to Spain. They could only be reached through the Mississippi, and could only be retained by the forbearance of England and Spain. The withdrawal of France from North America materially changed the relation between England and the colonies. Several public men in England declared that it would be to the interest of England to restore to France the valley of the St. Lawrence; that the success of British arms had destroyed the balance of power upon the North American continent; that the colonists, no longer requiring their assistance, would soon weary of their authority; that they were not likely to continue to submit to a policy which forbade a colonist to pursue certain branches of industry in order that they might be compelled to purchase from England, and which refused them the privilege of taking the products of their industry into the markets of the world. A pamphlet was published by William Burke, urging the restoration of the St. Lawrence to France, and it was answered by Dr. Franklin.*

* M. de Vergennes, the French Ambassador at Constantinople, said to Mr. Lind, an English traveller:—"The consequences of the cession of Canada are obvious. I am persuaded that England will ere long repent of having removed the only check that could keep her colonies in awe. They stand no longer in need of her protection; she will call on them to contribute towards supporting the burdens they have helped to bring on her; and they will answer by striking off all dependence." Quoted in Bancroft, Vol. III., p. 320.

"On the last day of October, (1775), Lord Stormont, the British Ambassador in France, who had just returned to his post, was received at Court. The King of France, whose sympathies were all on the side of Monarchical power, said to him: 'Happily the opposition party is now very weak.' From the King, Stormont went to Vergennes, who expressed the desire to live in perfect harmony with England; 'far from wishing to increase your embarrassments,' said he, 'we see them with some uneasiness.' 'The consequences,' observed Stormont, 'cannot escape a man of your penetration and extensive views.' 'Indeed, they are very obvious,' replied Vergennes; 'they are as obvious as the consequences of the cession of Canada. I was at Constantinople when the last peace was made; when I heard its conditions I told several of my friends there that England would ere long have reason to repent of having removed the only check that could keep her colonies in awe. My prediction has been too well verified. I equally see the consequences that must follow the independence of North America, if your colonies should carry that point at which they now so visibly aim. They might when they pleased conquer both your islands and ours. I am persuaded that they would not stop there, but would in process of time advance to the Southern continent of America, and either subdue its inhabitants or carry them along with them, and in the end not leave a foot of that hemisphere in the possession of any European power. All these consequences will not indeed be immediate. Neither you nor I shall live to see them; but for being remote they are not the less sure.'" Lord Stormont to Lord Rochford, Secretary of State, No. 19 separate, 31st Oct., 1775: Quoted by Bancroft, Vol. VII., p. 96. Vergennes, in 1782, informed Mr. Adams he did not favour the concession of the liberty to fish in the B. N. American waters to the people of the United States; and that he thought England ought to retain the country north of the Ohio, and the State of Maine, as British possessions: but the British Ministers were not equally well informed. See Correspondence and Diary of John Adams.

The public men who opposed colonial taxation and greater commercial freedom to the colonists, one after another ceased to be among the advisers of the Crown. Instead of diminished dependence being followed by greater colonial freedom, an opposite policy was pursued. Ministers, acting upon the Report of the Lords of Trade, undertook to hold the valley of the Ohio against the colonists, as France had held it twenty years before against both.

No new colonies were to be formed. According to the Report of the Lords of Trade, the climate of the unpeopled west was too favourable, the soil was too fertile, and the country was too far away. The southern colonies would be deserted on account of the heat, and the northern colonies on account of the cold, and all would seek new homes upon the plains of Illinois, where British manufactures could not reach them. Lord Hillsborough was afraid that Nova Scotia would be deserted, and fall again into the possession of France, and the two Floridas would revert again to Spain. He not only opposed the establishment of new provinces north of the Ohio, but sought to prevent the colonization of the lands acquired from the Indians by the Treaty of Fort Stanwix; and because his colleagues were not willing to go quite so far, he resigned his seat in the Cabinet.*

The grant to the Ohio Company was subsequently merged into what was called the Walpole Grant. Dr. Franklin was negotiating with the Treasury in reference to this grant. It embraced upwards of 20,000,000 of acres of land, lying between the Alleghany Mountains and the Ohio River. The Lords of Trade and Plantations reported against the grant; but Franklin had induced Lords Hertford, Gower, Camden, and others to become shareholders in his scheme. Through their influence the Privy Council disregarded the adverse views of Lord Hillsborough and the Lords of Trade. Attorney-General Thurlow took care not to give effect to this determination. The grant was never sealed. The new province south of the Ohio was not established. Hillsborough was no longer minister, but his colonial policy remained behind him.†

When the proclamation establishing the Government of Quebec and of the Floridas was issued, the Indian War under Pontiac was being vigorously prosecuted; the British had not yet acquired possession of the Illinois country. Major Loftus had essayed to go up the Mississippi in the spring of 1764, with 400 men, to accept the surrender of the country, but was prevented by the Indians along the river, who had been induced by Pontiac to resist, and he was compelled to return again to Mobile. The following year Captain Stirling went thither with one hundred men from Fort Pitt, and accepted the surrender from St. Ange, the French Commandant at Fort Chartres, who retired with a garrison of twenty-one men and about one-third of the inhabitants of the town, to St. Louis on the west side of the Mississippi.

Captain Stirling at once caused a proclamation from General Gage the Commander-in-Chief of the King's troops in America, to be published, informing the people "That His Majesty grants to the inhabitants of the Illinois, the liberty of the Catholic Religion, as has already been granted to his subjects in Canada. He has consequently given the most precise and effective orders to the end that his new Roman Catholic subjects of the Illinois may ex-

* Bancroft, Ch. 47, vol. V.; also various letters of Hillsborough to Gage, to Gov. Wright, and others. Spark's Franklin, vol. IV.

† Knox's State Papers, vol. II. p. 45; Spark's Franklin, vol. IV; Bancroft's Hist., vol. V., ch. 47; Lord Mahon's Hist., vol. V. p. 231; Memorial of Franklin and Wharton.

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erise the worship of their religion according to the rites of the Romish Church, in the same manner as in Canada. That His Majesty moreover agrees that the French inhabitants or others who have been subjects of the Most Christian King (the King of France), may retire in full safety or freedom wherever they please, even to New Orleans, or any part of Louisiana; although it should happen that the Spaniards take possession of it in the name of His Catholic Majesty (the King of Spain), and they may sell their estates, provided it be to the subjects of His Majesty, and transport their effects as well as their persons without restraint upon their emigration, under any pretence whatever except in consequences of debts or of criminal processes. That those who choose to retain their lands and become subjects of His Majesty, shall enjoy the same rights and privileges, the same security for their persons and effects, and the liberty of trade, as the old subjects of the King.

"That they are commanded by those presents to take the oath of fidelity and obedience to His Majesty, in presence of *Sieur Stirling*, Captain of the Highland Regiment, the bearer hereof, and furnished with our full powers for this purpose. That we recommend forcibly to the inhabitants to conduct themselves like good and faithful subjects, avoiding, by a wise and prudent demeanor, all causes of complaint against them.

"That they act in concert with His Majesty's Officers so that his troops may take possession of all the forts and order be kept in the country. By this means alone they will spare His Majesty the necessity of recurring to force of arms, and will find themselves saved from the scourge of a bloody war, and of all the evils which a march of an army into their country would draw after it."

Captain *Stirling* did not long remain in the Illinois country. He was superseded by Major *Farmer*, of whose administration of affairs little is known. His going to that country, according to the statement of Lord *Shelburne*, cost the British Government, for extraordinary charges, £30,000. Colonel *Read* was the next officer who held the post of Commandant in the Illinois country. He made himself odious to the population by acts of military oppression, occasioned by their open hostility to British authority. On the 5th of September, 1768, Lieutenant-Colonel *Wilkins* arrived at Fort *Chartres* as Commandant of the Illinois country. He issued a Proclamation, by order of General *Gage*, establishing a Court of Justice within his jurisdiction "for the purpose of settling all disputes between man and man, and all claims in relation to property, whether real or personal." The system, although preferred to a military tribunal, did not satisfy the people. Many among them demanded trial by jury; but this was refused, and the Court became unpopular. In April, 1769, Colonel *Wilkins* was engaged in making extensive grants of land in Illinois, ostensibly "for the better settlement of the Colony," and the Governor agreed to be interested to the extent of one-sixth part thereof.¹ The Govern-

¹ "In November, *Wilkins*, the new Commandant in Illinois, following suggestions from *Gage*, appointed seven Civil Judges to decide local controversies, yet without abdicating his own overruling authority. This plan, which could be but temporary, led the people to reflect on the best forms of Government.

"But *Wilkins* was chiefly intent on enriching some Philadelphia Fur Traders, who were notorious for their willingness to bribe; he reported favourably of their zeal for British Commerce, and, in less than a year after his arrival, executed at their request inchoate grants of large tracts of land, of which one-sixth part was reserved for himself.

"This procedure contravened the explicit orders of *Hillsborough*, who wished to diminish, and if possible, to extirpate, the western settlements."—*Bancroft*.

ment of all the Indian Territories was under the absolute control of the Commander-in-Chief of the King's forces upon the Continent. It is not surprising that in remote districts, where a spirit of lawlessness prevailed, that justice was harshly administered, and that commanders were occasionally guilty of an abuse of authority where there was no public opinion to restrain them.*

In November, 1773—the year prior to the passing of the Quebec Act—the people of Illinois, failing to obtain from General Gage the reforms in their government which they desired, addressed themselves directly to Lord Dartmouth, the Secretary of State for the Colonies. He pronounced their demand “very extravagant.” “Should a plan of government so evidently tyrannical,” said Daniel Blouin, the agent of the Illinois colonists, “be established, it could not be of long duration.”

They asked for institutions like those possessed by the State of Connecticut, and declared that no irresponsible government could give satisfaction. At this time a considerable number of the French population in Illinois, had migrated to the west of the Mississippi. They had sold their possessions to British subjects under the authority secured to them by the Treaty of Paris. St. Louis was founded by La Clade in 1764; D’Emigrant by M. Florissant in 1766; Portage des Sioux, eight miles above the mouth of the Missouri, in 1766; Carondelet, six miles below St. Louis, by M. de Targete, in 1767; and Les Petite Cote, by M. Blanchette, in 1769. The founding of these five settlements within six years, implies a considerable emigration, and the nature of the reforms sought in the Illinois country indicates the presence of English colonists, who were seeking to bring the grievances of the French population into line with the causes of discontent in the English colonies, and they so far succeeded that sympathies of the French upon the Mississippi and upon the Wabash, unlike those of the St. Lawrence, were against England during the War of Independence.†

* Albach’s Annals; Brown’s History of Illinois; Monette’s History of the Mississippi Valley; Gayarre’s History of Louisiana; Peck’s Gazetteer; Public Lands, U. S. Papers, vol. II.; Letters of Gage, Wilkins, Forbes, &c.

† In 1783, Lieutenant-Governor Hamilton, of Detroit, addressed a Memorial to the Commissioners of His Majesty’s Treasury, in which he says that, “In the month of April, 1775, I was appointed Lieutenant-Governor and Superintendent of the settlement of Detroit, at a salary of £200.

“In the month of September following, Sir Guy Carleton sent me to that post with verbal orders, the state of the Province (of Quebec) at that time pressing my departure. The intercourse of the lower part of the Province having been cut off by the rebels possessing themselves of Montreal, I was under the necessity of acting for a time discretionary. In the month of June, 1777, I was authorised to raise and employ the Indians, till which time I had exerted myself to restrain these people from taking an active part.

“On the 6th of August I received intelligence of the rebels having pushed considerable detachments to the Illinois, where they made prisoner Mons. La Rocheblave, whose activity as superintendent occasioned his being treated with shameful indignity. (a)

“The express returning the 6th of October, I set out from Detroit on the 8th, notifying Captain de Puyster, of the 8th Regiment, at Michillimackinac, to make a diversion. I was 71 days in going to Vincennes on the Wabash, with 600 men. The rebels, joined by all the French inhabitants of that Government were in possession of it, but being apprehensive of the Indians, not a single person suffered in property or otherwise. In the month of February next ensuing, they joined the Americans and fired on the fort.

“The Canadian volunteers who made half of my little garrison deserted, and we were reduced to the horrible necessity of capitulation.” Simcoe MSS.

(a) Rocheblave seems to have been appointed in 1775, and sent from Quebec. The three posts, Detroit, Vincennes, and Fort Chartres, were under Sir Guy Carleton, being within the limits of his government.

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At this time the French inhabitants of the Government of Quebec were petitioning the King for the restoration of their ancient laws, the toleration of their religion, and the removal of their civil and political disabilities. They also asked that their province might have "restored to it the same limits which it had before, and to include the coasts of Labrador, in the Province of Quebec, and those parts of the upper country which had been taken from it, since it cannot maintain itself without its usual commerce."*

The English inhabitants petitioned His Majesty for the maintenance of the English law, and the election of a General Assembly, "as," they say, "there is a sufficient number of Protestant subjects residing in and possessed of real property in the province, and who are otherwise qualified to be members of a General Assembly."

In the ancient provinces of England, discontent was bordering on open insurrection. In every part of the territory ceded by France, the people were asking for a change in the system of Government. As the breach between the English Ministry and the English colonies widened, the animosity felt towards the real authors of Pontiac's war died away. The British Government and Parliament set themselves earnestly to work to conciliate the new subjects of the King.¹

THE QUEBEC ACT.

The Quebec Act was introduced by the Earl of Dartmouth into the House of Lords on the 2nd of May, 1774. The Bill as it was introduced, declared in the preamble that a very large part of the territory of Canada, within which there were several colonies and settlements, subjects of France, who claimed to remain therein under the faith of the said treaty, were left without any provision being made for the administration of civil government therein, &c.; be it enacted that all the said territories, and islands, and countries heretofore a part of the Territory of Canada in North America, extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands, and countries are not within the limits of the other British colonies as allowed and confirmed by the Crown, or which have been, since the 10th February, 1763, made a part and parcel of the Province of Newfoundland be, and they are hereby during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th October, one thousand seven hundred and sixty three.

There can be no doubt entertained of the extent of country intended to be embraced by this description. It is a simple compliance with the petition of His Majesty's French subjects. The territories upon the east which had been, by the proclamation of October, 1763, annexed to the government of Newfoundland, was now to be annexed to the Province of

* North American Pamphlets, vol. XII, Library of Parliament. Massere's Papers.

¹ Lord Shelburne, in a communication to the Board of Trade, 17th May, 1767, favoured the election of an Assembly in the Province of Quebec, but he was spoken of by the King as an enemy in consequence of his and other changes in the Colonial policy. Chatham Correspondence, vol. III. pp. 187, 191, 199, 207.
² Pitkin's History. Bancroft, vol. V. p. 41. Eng. ed.

Quebec ; and the upper country which, by the same proclamation, was declared to be for the present reserved for the use of the Indians, was now, westward to the Mississippi, and northward from the Ohio to the Hudson's Bay country, to be made part and parcel of the Province of Quebec. It is important to bear this in mind, because it will help us the better to understand the language of this Act as it finally passed, if indeed there can be any doubt as to its meaning.

With a view apparently of avoiding any discussion upon the boundaries of New York, Pennsylvania and Virginia, the words—"not within the limits of some other British Colony as allowed and confirmed by the Crown"—are inserted.

Virginia claimed the country westward to the Mississippi, and Pennsylvania to the south-eastern shore of Lake Erie, and New York so much of the Indian country as lay westward of the boundary of the Treaty of Fort Stanwix to the Niagara River.

When the Bill came down to the House of Commons this clause was attached by Edmund Burke, who was, at the time, Agent for the Province of New York. The boundary line between New York and Canada had for nearly a century been a matter of dispute. For a short time one of the Governors claimed the Peninsula of Upper Canada as a possession of the Iroquois Indians, but the limits usually claimed by the representatives of the Duke of York, and subsequently by the Crown, were, the St. Lawrence River and Lake Ontario upon the north, and the Niagara River upon the west. The French with equal pertinacity maintained the right of the Crown of France to all the territory drained into the St. Lawrence and Lake Ontario. By the Treaty of Fort Stanwix the whole of the western part of the State was the recognised property of the Six Nations. And it was not at all improbable that under this clause of the Quebec Bill, the boundary line for New York would be the one drawn in the Treaty of Fort Stanwix. This would include, in the new province, not only the western part of New York, but a considerable portion of the north-western part of the Province of Pennsylvania.

Pennsylvania does not seem to have been troubled about her boundary. She was a proprietary colony, and the Crown could not change her boundaries at will. But this was not the case with New York. Upon the accession of James II. to the throne, New York became a Crown colony, and the Crown was at liberty to say what the boundaries of New York should be. The debate too, in the House of Commons, made it clear upon what principle the Government intended to proceed in fixing the limits of New York under the Bill, should it be carried in the shape it came down from the House of Lords.

It may be here observed that from the beginning to the close of the discussion upon the Bill, there is no evidence of the clearly expressed intention of the Ministers and the Law Officers of the Crown, to embrace all the country between the Atlantic and the Mississippi, and between the Ohio and Hudson's Bay Territories within the limits of the Province of Quebec having been abandoned. Mr. Thomas Townshend, jr., in speaking of the policy of the government in bringing forward the Quebec Bill, said:—"I know there prevails the opinion that the best thing you can do is to make that country a French colony, and keep the English out of it as much as possible." He asked whether the English settlers, which, he said, then numbered 25,000, were to be placed under French laws. Mr. Townshend was certainly in error when he said that there were 25,000 English colonists settled north of the Ohio. More than this number had crossed the

mountains, to Ohio. A few and a few trails had established

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Attorney-General was included in the Province of Quebec called by the sea there have been, the southern and scattered posts

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Lord North be ascertained, where there was different manner boundary is drawn on either side, then to an appeal to the with the project of He had no object

mountains, the limit fixed by the Proclamation of 1763; but they had not crossed the Ohio. A few had gone to the Illinois country, where they had purchased from the French; and a few traders had gone from Albany to Detroit. Except at these two points no English had established themselves beyond the Ohio.

Lord North pointed out that *Parliament was now called upon to consider whether it was fit that the scattered posts and settlements should continue without any government, whether they should form separate and distinct governments, or whether they should be made a part and parcel of the Province of Quebec. He said that the Government considered the latter the preferable method; the more especially as the Canadians and those who trade with those settlements ask for the annexation.*

Attorney-General Thurlow pointed out that *the Government never held that all Canada was included in the proclamation; that it is not even all included by the present Act; that the Province of Quebec is not considered as a province formerly belonging to France; that it is not called by the same name; that no English settlements are embraced within its bounds; that there have been, for nearly a century past, settlements in different parts of it of French only; in the southern and western parts of it, upon the Ohio and Mississippi; that there were other scattered posts in the neighbourhood of Detroit and Lake Michigan.*

Mr. Wedderburn, the Solicitor-General, intimated that *it was the intention of the Government to prevent settlement north of the Ohio; and by the establishment of such a Province with such a constitution, in preventing the settlement of the country, and in confining the inhabitants, according to the ancient partition of the country, to the Atlantic coast and to the rivers flowing into it, they would accomplish this object better than by any restriction laid upon the Government.*

Governor Johnston, who had been at one time governor of West Florida, said that during his governorship it became his duty to become acquainted with the boundaries of Louisiana; that he had obtained all the information he could upon the subject, and that he was surprised to hear given in evidence that Canada extended as far as it was now proposed to make it.

These observations are quoted merely to prevent their being used to mislead. Reference has already been made to the difference between the boundaries given to Louisiana by her charters and by geographers. There was no territory embraced in the Province of Quebec by the Bill, which was not a part of Canada at the capitulation, except the Illinois country; and it is highly probable that it is to this country that Governor Johnston refers. Even the Illinois country had been a matter of contention between Canada and Louisiana after 1735, but if Governor Vaudreuil's statement to Colonel Haldimand is to be relied upon, its possession was ultimately assigned to Louisiana.

Lord North again spoke, and went on to state how, under the Bill, the boundary would be ascertained. He said that he would propose an alteration that would save every right where there was one; that it was the practice to have different boundaries laid down in different manners. Where the territories separated were the property of the Crown, the boundary is drawn by His Majesty's officers alone; where there had been a grant or a charter on either side, then commissioners had been appointed also; and the line so drawn is subject to an appeal to the Privy Council. It is intended after the passing of this Act, to go on with the project of running the boundary line between Quebec and the provinces on the south. He had no objection to having something more precise, but he thought it better to save the right

of the other colonies, and to leave the boundary to be settled on the spot by commissioners. Lord North intimated that if there were French settlements on the south shore of the St. Lawrence, then the river ought not to be made the boundary; but that these settlements should be included in the Province of Quebec.

Some notice may be now taken of what Mr. Burke says about the former limits of Canada, when he speaks about the limits of Canada being similar to those established for the government of Quebec by the Royal proclamation of October, 1763.¹ When he says "there was no considerable settlement south-west of the line of 1763," he certainly could not have been acquainted with the facts; and when he says "the people of Canada acquiesced in that line," he is not less mistaken. They were never consulted. They were a subjugated race, hostile in feeling and alien in religion, and who were looked upon as the chief authors of the Indian war that had desolated the country by the wanton destruction of life and property along several hundred miles of frontier, that had caused the destruction of many of the forest posts with their garrisons, and entailed a large expenditure of money upon the Government. Mr. Burke said that as the Bill was brought forward on the principle that Parliament was to draw a line of circumvallation about our colonies, and to establish a siege of arbitrary power by bringing Canada round about them "having another people differing from them in manners, language and laws," he thought it important to make the boundary as clear as possible. It is necessary for those who are besieged not to unknowingly enter into this Province and disturb its possessors. He described the south-western boundaries of the old Province of Quebec. But Mr. Burke, like other speakers, confounded Canada with Quebec. Mr. Burke declared that the Crown had the power of carrying the greatest portion of the actually settled Province of New York into Canada (Quebec); that the boundary line might be fixed at the very gates of the city, and subject that colony to the liability of becoming a province of France. He said it was not a line between New York and some other English settlements; it was not a question whether you should receive English law and English government upon the side of New York, or whether you should receive a more advantageous government on the side of Connecticut, or whether you were restrained upon the side of New Jersey, in all these you still found English customs, English juries and English assemblies wherever you go. But this was a line which was to separate a man from the right of an Englishman. Mr. Burke, therefore, insisted that the line between Canada and the other Provinces should be clearly laid down in the Bill instead of leaving it afterwards to be determined by the King.

Lord North expressed his willingness to lay down the boundary more definitely, if any gentleman would find a boundary of certainty, but he expressed his fear of making a mistake by undertaking to do at Westminster what could be better done upon the ground.

It will be seen from this outline of the discussion upon the Quebec Bill, as well as from the amendments proposed, that there was no attempt made to give to the Province less extensive limits than those originally proposed,—all that Mr. Burke and others sought to do was to draw the separating line upon the south in such a way as to protect the Provinces of New

¹ Had this been so, the adoption of a new name for the Province would have been a most senseless proceeding. The only reason for naming the new Province, Quebec, was to prevent its being confounded with the old one out of which it was carved.

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York and Pennsylvania against encroachment. New York being a Crown colony, this was especially necessary; but Pennsylvania being, as said, a proprietary one, the King could not by his prerogative alter the grant which he had made. What Mr. Burke proposed on behalf of New York was, to protect that Province by making the separating line between it and Canada a legislative act which it would not be in the power of the Crown to change. *It was, as shown already, clearly the intention of Lord North not to make the River St Lawrence and Lake Ontario the northern boundary of New York. He said, as we have seen, that there were Canadian settlements there, but that there were no New York settlements; and that, for this reason, it was more prudent to have the boundary line settled upon the spot, so that they might not involve themselves by doing at Westminster what could be better done in America.*

Mr. Burke pointed out to the House that New York, no less than Quebec, was a Crown Colony, and that unless Parliament fixed the boundary, the Crown could draw the separating line where it pleased. It could even grant the power of adjudging. It was, therefore, worth while to give a clear boundary so that every man might know whether he was or was not an Englishman.

Mr. Dunning, during the debate, pointed out that the River Ohio runs through the Province of Virginia; that the north-western part of the Province had been lopped off and made a part of Canada (Quebec). Although by the terms of their Charter they might pass the Ohio River, yet, by the Bill, if they did so they would be in the same condition in which the Bill puts Canada (Quebec). According to Mr. Dunning's view, the system of absolute government would be extended to the Ohio, whether the country westward of the Ohio belonged to Quebec or to Virginia. He said the Ohio was stated to be a boundary confirmed by the Crown; that he knew of no such confirmation; that he knew by the terms of the Charter that the colonists supposed themselves at liberty to extend as far as they pleased to the west, even to the Southern Sea—their natural boundary. There are others that contented themselves, he said, with less extensive claims. He did not know whether such extensive claims had been allowed or not, but he did know there had been a long subsisting dispute about the boundary of Virginia, which had never been discussed, much less decided; that after this Bill had become law the Virginians will learn that Parliament had decided the dispute without knowing what it was. He pointed out that the proprietors of Indiana would have their rights interfered with without being apprized of the Bill, although many of them resided in England.

What view the Virginians themselves took of the measure shall be by-and-bye stated.

It is unnecessary to give here the amendment proposed by Edmund Burke. On the 10th of June, Sir Charles Whitworth reported to the House the amendments which had been made in Committee. "The first clause being read," says Lord Cavendish, "there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Barker, and Sir Charles Whitworth went up-stairs to settle it, while the House was supposed to be proceeding upon it. The House continued for at least half-an-hour doing nothing in the meantime. The difference was, whether the tract of country not inhabited should belong to New York or Quebec. At five o'clock, Mr. Burke returned with amendments, some of which were agreed to, others not." It was finally agreed to as it now stands in the Act. So far as New York was concerned, Mr. Burke carried his point. The unsettled wilderness of New

York lying between the lakes and the boundary agreed upon seven years earlier at Fort Stanwix, which it is clear Lord North intended to have embraced in Quebec, was yielded to New York. *The Southern boundary line—the one which was to separate Quebec from the other Colonies—was the only one discussed.* It was definitely laid down in the Bill instead of being left to be fixed by the Crown, under the general words of the section as it originally stood.¹

It will be seen from this brief outline of the debate, that the policy of Lord Hillsborough, of confining the English settlers to the territory held before the conquest of Canada, was still adhered to, if we except the Floridas. The speech of Mr. Wedderburn, the Solicitor-General, shows very clearly what Ministers hoped could be accomplished by a system of absolute government and French jurisprudence better than by proclamations for bidding colonization within a country, which, according to the prevailing opinions in Parliament, it was the interest of the mother-country to keep a desert. The Bill, as it came down to the House of Commons, embraced within the limits of the new Province of Quebec the whole country north of the Ohio and West to the Mississippi. These limits were not abandoned. They are clearly expressed in the Bill as it finally passed. When the Province of Virginia remonstrated against the Quebec Act, she assumed that it extended the boundaries of that province westward to the banks of the Mississippi; and, in the following year, when it was proposed in the House of Lords to repeal the Act, it was spoken of by Lord Shelburne as having so enlarged the Province of Quebec that it embraced the whole country to the Mississippi River; and it will be shown that this was also the opinion of the Law Officers of the Crown and of the Government.

There is not a shadow of foundation for maintaining that the western limit of Quebec under the Act of 1774, was an astronomical line, drawn due north from the junction of the Ohio and the Mississippi rivers. There is not a word nor a phrase describing the limits of the Province to afford the slightest warrant for such a construction.

We have in the preamble reasons assigned for annexing territories both upon the East and the West of the old government of Quebec. Two things are stated which Parliament purposed to accomplish, by enlarging the Province: to embrace the several colonies and settlements of French which were left without a civil government by the Proclamation of the 7th of October, 1763, and to annex upon the East the sedentary fisheries of Canada, which, by that proclamation, had been united to Newfoundland, and in consequence of that union, subjected to regulations inconsistent with the nature of such fisheries. The preamble, then, makes clear the object Parliament had in view in annexing the territories upon the West: it was to embrace the several colonies and settlements of the subjects of France, who claimed to remain there under the faith of the treaty of Paris. Now this could only be done by extending the limits of the Province of Quebec to the banks of the Mississippi. If an astronomical line was drawn due north from the junction of the Ohio and Mississippi rivers, it would have excluded more than half the population in those colonies and settlements which the Act declares have hitherto been left without any civil government, and for which it proposes to provide.

¹ In this summary the writer has mainly followed the report of the debates by Lord Cavendish, but in his report there are obvious mistakes, from careless reading of the proof. These have been corrected in this summary by the report to be found in a work called the "Parliamentary Debates, from 1743 to 1774."

If we compare that no change was made in the Act as introduced, heretofore a part of the River Ohio boundary of the Province of New York's Bay, and with other British Colonies of February, 1763, hereby during His Majesty's reign Quebec as created.

It is important to know what portions were included in the countries, territories, and the Mississippi.

No lines are drawn by this section according to the words of the Bill as to the boundaries in North America by a line from the mouth of the River St. Lawrence themselves into the five degrees northern latitude directly westward to the said River St. Lawrence thence through the middle of the said Province along the eastern and northern boundaries shall be intersected by the said line Pennsylvania, in Canada, and the northern and western boundaries of the said Province Ohio; but in case that the said line following the said boundary line to the said north-western corner of the said Province westward to the banks of the said River Ohio territory granted to the said Province also all such territories and settlements within the said Province and seven hundred square miles of land, be and they are hereby declared a parcel of the Province of Quebec on the 7th day of October, 1763.

"2. Provided also that no other colonies or territories of any other countries shall be included in the said Province. We find, upon comparison of the said Act with the original, that no change has been made:—The

If we compare the Bill as it was introduced, with the Bill as it finally passed, we shall see that no change whatever was made in the western limit of the Province. The words of the Act as introduced are: "Be it enacted that all the said territories, islands, and countries, *heretofore a part of the Territory of Canada*, in North America, *extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi*, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands and countries are not within the limits of the other British Colonies as allowed and confirmed by the Crown, or which have, since the 10th of February, 1763, made a part and parcel of the Province of Newfoundland, be and they are hereby during His Majesty's pleasure annexed to and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation."

It is important to observe what portion of this clause was changed or struck out, and what portions were permitted to stand. There can be no doubt as to its meaning. It is, *all the countries, territories and islands which extend southward to the Ohio, westward to the Mississippi*.

No lines are spoken of, and all the territories to be annexed to the Province of Quebec by this section are spoken of as having been a part of the Territory of Canada. Now, the words of the Bill as it finally passed are as follows:—"That all the territories, islands, and countries in North America belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees northern latitude on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain, until in the same latitude it meets the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario; thence through the said Lake Ontario and the river commonly called Niagara; and thence along the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said Province until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania; and thence by a right line to the said north-western angle of the said Province; and thence along the western boundary of the said Province until it strike the river Ohio; and along the bank of the said river westward to the banks of the Mississippi; and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands, and countries which have, since the 10th day of February, one thousand seven hundred and seventy-three, been made part of the Government of Newfoundland, be and they are hereby during His Majesty's pleasure annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation the 7th day of October, 1763.

"2. Provided always that nothing herein contained shall in any wise effect the boundaries of any other colony."

We find, upon comparing the original and amended sections, that the following changes have been made:—The words "*heretofore a part of the Territory of Canada*" are omitted.

boundary. The Mississippi was at that time the western limit of the British possessions. The country upon the opposite side belonged to Spain, and the southern boundary was obviously carried forward to that river in order to make a boundary at once natural and international, the western limit of the new Province of Quebec. It is not reasonable to suppose that the boundary at the south-western extremity would be extended to the border of the Spanish possessions, but that this would be done nowhere else. We must assume that the majority who supported the Bill in the Lords and in the Commons were not devoid of sense; and it would certainly be an act of folly to leave at least half the population, for whom it was declared necessary to provide a civil government, without that necessity. If those who contend for an astronomical boundary upon the west, beginning at the extreme limit of the British possessions, yet not including all the British territory, were asked to assign some reason for so locating the boundary, what rational explanation could they give? The reason given in the Act itself for annexing the country upon the west, was to embrace the several colonies and settlements of French that were left without a civil government by the proclamation of 1763. But an astronomical boundary would defeat this object. The whole population of the Illinois country, the French settlement at Prairie-du-Chien, and the residents in the north-west, would have been excluded. Had Parliament intended to leave these people without a civil government, there was no necessity for extending the boundary upon the south farther west than the confluence of the Ohio and the Wabash Rivers. It has been said that if it was intended to make the Mississippi the western boundary of the Province of Quebec, we would have had after the word "*northward*," the words, "*along the Mississippi*" inserted in the Act. Those who hold this view, overlook the manner in which the boundaries are indicated, and assume that the word *northward* is applied to a line. I have already shown that this is a mistaken assumption,—an assumption incompatible with the description given. Before the words, "*along the banks of the Mississippi*" could have been inserted, the whole phraseology of the section would need to have been changed. The description begins with a statement that the countries to be embraced are "*bounded on the south by a line*," &c. Now when the western terminus of this line was reached, if it had been intended to continue to embrace the boundary, it would have been necessary to have inserted the words, "*bounded on the west*," &c., or else to have struck the word "*south*" out of the description of the southern boundary. It is also to be noticed that in the description of the southern boundary, words of departure are constantly used; "*along the highlands*;" "*thence up the eastern bank*;" "*thence through the lake*;" "*thence along the northern boundaries*;" "*thence along the western boundary*," &c. But when we reach the banks of the Mississippi, no words of departure are used. The description of a boundary line—the only one necessary to describe—is complete. The banks of the Mississippi having been reached, the western limit of the province is sufficiently indicated, and the word "*northward*" is applied to the countries, territories, and islands, north of the southern boundary line.

But if it were true that the word *northward* is used in the first section of the Quebec Act for the purpose of locating the western boundary line, neither the usages of our language, nor the principles of legal interpretation would warrant the conclusion that it makes the western boundary of Quebec an astronomical line drawn due north from the junction of the Ohio and Mississippi Rivers.

If the word northward, or even north, indicated an invariable direction, we never would have had in our language such expressions as "directly north" and "due north," for the qualifying word would give no additional precision to the meaning of the simple word. When we speak of a line running "westward," we use a word much less precise in its meaning than if we had used the expression "due west." A westward line may diverge to the north or to the south of a due west line. All we mean to affirm is, that such a line points more nearly to the west than it does to the north or to the south. Webster, upon the usage of Bacon and Dryden, defines northward, as being towards a point nearer to the north than the east and the west points; and this is undoubtedly the sense in which it is most commonly used. And it is because this is the sense in which this and similar words are used, that we often designate by words derived from the cardinal points of the horizon, the different parts of a country, no matter how irregular its boundaries may be.

In the treaties between Great Britain and the United States, the words "due west" are used in those of 1783, 1818, and 1842, to indicate a line produced evenly between the east and west cardinal points. In the treaty of 1846, the word "westward" is used in the sense of "due west," and this is the only instance in which we have found it so used; but it has this precision given to it by the qualifying words, "along the 49th parallel of north latitude." In the commission of Lord Dorchester we have the words, "directly west," employed to indicate the direction of a line along the 45th parallel, and the word "northward" applied to a line along the Mississippi River, which is an irregular boundary. And in the first section of the Quebec Act, the words "directly west" are applied to a line along the 45th parallel, and the word "westward" to a line descending along the Ohio River. If, then, it be assumed that the word northward is here applied to a line marking the western limit of the Province, whether that line is a straight or a meandering one, whether it inclines to the east or to the west of the meridian point from which it was begun, must be determined by the attendant circumstances, and by the intention of the law. If, at the starting point, there is no natural boundary, and if to give effect to the instrument, there is no reason to deviate to the east or to the west of a line drawn due north, then such a line must be preferred. Now we have here to consider, assuming the word northward to be applied to the direction of a boundary line, whether there are any qualifying circumstances which would make this other than a due north line. We say there are. There is this simple rule of legal construction, that every part of an Act is to be so construed as to give effect to the intentions of its authors, and not to defeat that intention. Now, the Act shows that it was the intention of the framers of the law to include all the French settlements in the Indian country within the limits of the Province of Quebec, and as a line drawn due north from the confluence of the Ohio and the Mississippi Rivers would not have included all the colonies and settlements, but would, on the contrary, have excluded more than half, and would have left them without any civil government, a due north line cannot be made the western boundary of the Province. A slight circumstance is sufficient to warrant a departure from an astronomical line, where an indefinite word, such as northward, is employed. But a construction which would defeat the intention of the law, as expressed in the law itself, is not a slight circumstance, but a powerful reason for such a departure. It is also a well settled rule that the ends

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* 3 Maule and Selw
of Nations, Bk. 2, ch. 17,
+ 2 Ves., Jur. 56.

contemplated must always be considered, and general words may thereby be restrained. An interpretation which would defeat the object intended to be accomplished, and render an important provision nugatory, is to be rejected; for it is not to be presumed that sensible men engaged in the business of legislation could have intended that their enactments should in any particular prove a mere nullity.*

The boundary mentioned upon the west is a natural boundary, and natural boundaries when named must be followed, unless the contrary is clearly expressed. But there is a further reason for adopting the Mississippi as the western boundary of the Province. It was the separating line between British and Spanish territory. It is not to be supposed that Parliament would have left a strip of country several hundred miles in length and for a considerable distance not fifty miles in breadth, and containing a large number of people, without any civil government—people of the very class for whom it was deemed necessary to provide a civil government. Can it be supposed that this line was extended westward so as to embrace Detroit, Mackinac, Green Bay, Ouatnon and Vincennes; that, in fact, it was extended more than a hundred miles to the west of any one of these colonies and settlements, and within a few miles of Kaskaskia, St. Philip, Cahokia, Fort Chartres, and yet fail to include them? Can it be believed that it was carried westward a thousand miles to embrace the French colonists, and that it was so drawn as to exclude one-half of them, when, by following the Mississippi, it would include the whole? Such a construction makes the law, not the perfection of reason, but of stupidity.

In considering this section of the Quebec Act, we are not confined within the limits allowed by the ordinary rules of legal interpretation. It is not the practice to apply the rules laid down by Courts in the construction of contracts or of public or private statutes regulating ordinary affairs, to a statute like this, which is institutional in its character, and in the present controversy possesses the characteristics of a treaty between two independent States. The rules by which the true construction of this section are to be ascertained, are those which would be followed by the executive departments of the governments, were they separate and independent states. In the suit of the Nabob of the Carnatic against the East India Company, the Court said that, "In case of mutual treaty between persons acting in that instance as states independent of each other—and the circumstance that the East India Company are mere subjects with relation to this country has nothing to do with that—the treaty was entered into with them, not as subjects, but as a neighbouring and independent State, and is the same as if it was a treaty between two Sovereigns, and, consequently, is not a subject of private municipal jurisdiction. It is not mercantile, but political in its nature."† This same principle is to be kept in view in the construction of the Quebec Act as between Canada and Ontario. The fact that Canada includes the Province of Ontario cannot in any way alter the rules of Public Law appropriate to the correct interpretation of the various instruments upon which the rights of the contending parties are supposed to depend.

Under our federal system of government, the Province and the Dominion has each its appropriate sphere of separate and distinct political power marked out for it by a supreme law,

* 3 Maule and Selwyn, p. 510; Rutherford's Institutes of Natural Law, Bk. 2, ch. 7; Vattel's Law of Nations, Bk. 2, ch. 17, sec. 283.

† 2 Ves., Jur. 56.

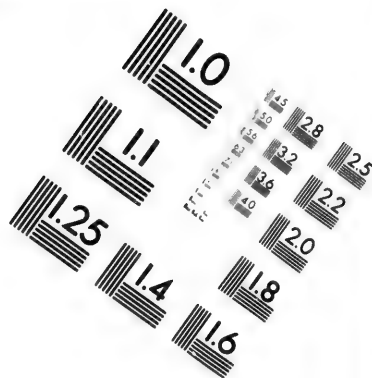
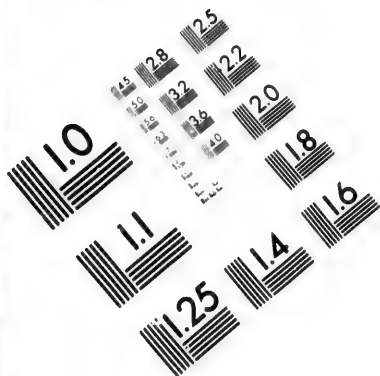
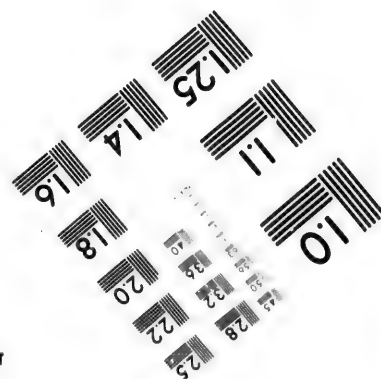
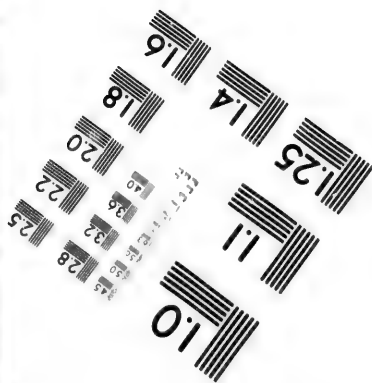
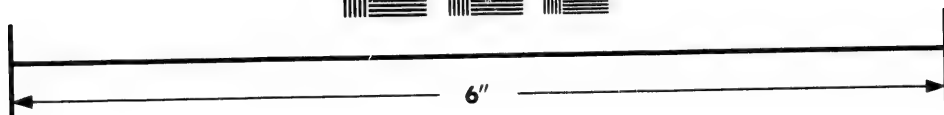
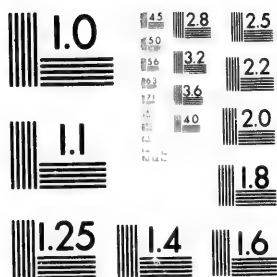


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and is as completely beyond the reach of the other, "as if the line of division was traced by land marks and monuments visible to the eye."* And it is because this is so that disputes as to boundaries between any province and Canada, and for the settlement of which no provision is made by the constitution, can be appropriately dealt with according to the usages of independent states, for an amicable settlement of such disputes.

It appears also to be a correct rule that the evidence by which the boundaries contended for by this Province may be established before the arbitrators, depends upon the law and usages of nations in disputes of a similar kind.

It may be further observed, too, that those upon whom has devolved the task of determining the construction of treaties, have not failed to avail themselves of all the light which the history of the circumstances which ultimately led to the negotiation of the treaty, may throw upon any ambiguous or obscure expression that it contains. They have not hesitated to go outside of the treaty in order the better to be able to determine its real meaning. It is only necessary to refer to the discussions between the Commissioners of England and France upon the construction of the twelfth Article of the Treaty of Peace at Utrecht, in reference to the limits of Acadia; to the various maps, public and private, and to the various histories which they produce in defence of the claims of their respective Governments; to the discussions between Mr. Adams and Segor De Onis in reference to the western boundary of Louisiana; and to the discussion between Secretary Fish and Lord Grenville as to the Alabama claims in the Treaty of Washington; and to the discussion of Mr. Russell and Mr. Bancroft in reference to the San Juan Boundary. It might also be mentioned that the same latitude has been exercised in the construction of a public Statute relating to the government of a colony. In 1851, when Earl Grey was Colonial Secretary, doubts having been expressed by the Governor of Antigua as to the proper interpretation of an Act to provide for the prosecution and trial of offences committed within the jurisdiction of the Admiralty, he directed Mr. Merivale to obtain the opinion of the law officers of the Crown. Mr. Merivale on doing so stated that he was directed to subjoin a paper which was drawn up shortly before the passing of the Act and explanatory of the reasons for its introduction, and this paper the law officers perused before they gave an opinion upon the scope of the Statute which they were called upon to construe. The Bill in its progress through Parliament had undergone changes. There were provisions in the Bill as introduced for the transmission of persons charged with offences within the jurisdiction of the Admiralty from one colony to another or to England, but these provisions had been withdrawn. The law officers do not say that the document submitted to them is wholly inadmissible as an aid in construing the law. They do not say that they are at liberty to look at anything outside of the Statute itself. On the contrary, they say "they have perused the several documents which have been transmitted to them." And it may be fairly assumed that the Earl Grey could hardly have directed Mr. Merivale to subjoin such a paper had it not been the practice of the law officers of the Crown to seek aid of this kind for the purpose of ascertaining with greater certainty the precise object intended to be accomplished by a constitutional statute. It will be observed that this paper did not contain the reasons of Parliament that enacted the law, but of the Ministers of the Crown who introduced it. It must have been assumed by Earl Grey that considering the relations between Ministers

* Taney, Ch. J., in *Ableman v. Booth*, 21, Howard, U. S. S. C. Rep., 516.

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and Parliament any formal statement of the policy of a proposed measure relating to the administration of the Government, is at least *prima facie* evidence of the intention of Parliament in the passage of the measure; and it cannot be supposed that a paper which the law officers of the Crown deemed useful in order to arrive at a proper understanding of the law, would be wholly inadmissible in any tribunal which might be called upon to give to the same law an authoritative interpretation.

Acting upon these well-established rules, the circumstances have been briefly stated which led to the introduction of the Quebec Bill by Ministers, and its enactment by Parliament, in order the better to understand what the promoters of the Act purposed to accomplish.

POLICY OF THE QUEBEC ACT AS AFFECTING THE OTHER COLONIES.

It will be observed in the first section of the Quebec Bill, the southern boundary extends along the *bank* of the St. Lawrence, the *bank* of Lake Erie, the *bank* of the Ohio, and to the *banks* of the Mississippi. There must have been some reason for using the plural form in this one instance, and the singular in the others. In the Bill as it came down to the House of Commons, the banks of the Ohio and the banks of the Mississippi were both used; and in the amendment proposed by Mr. Burke the plural form is used in both cases; and in the various changes in the phraseology in this section, we find the words, westward to the *banks* of the Mississippi, "and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay," were not changed; and it is barely possible that this part escaped observation, as the Bill was amended in the House. But it is more reasonable to suppose that the plural form was intentionally retained; and when the numerous letters between officials in England and America relating to the Indian trade are examined, and when we observe how anxious they were to exclude the English population from the territory north of the Ohio, it is not unreasonable to suppose that this peculiarity of the Quebec Bill was intended to serve that purpose. By the Definitive Treaty of Paris, the middle of the Mississippi was made the boundary between the English and French possessions, but the navigation of the whole river from bank to bank was free to the subjects of both crowns. Each had for the purposes of navigation and commerce, an easement in the half of the river belonging to the other, and a servitude upon its own. The Government of each nation could regulate the navigation of the river as far as its own subjects were concerned, as absolutely as if the river had been wholly within its own territory. Had the framers of the Quebec Act proposed to exclude the Mississippi, as they did the Ohio, from the Province, they ought to have used the same form of expression:—"to the *bank* of the Mississippi." Had it been proposed to do nothing more than to make the middle of the Mississippi the western boundary, the southern boundary would have been extended "along the bank of the Ohio to the Mississippi, and thence to the middle of the said river." But the authors of the Act used another form of expression, and they seem to have used it for the purpose of placing the navigation of the river, so far as British subjects were concerned, under the Government of Quebec. It has been shown that the English Government regarded the colonization of the country north of the Ohio, as an evil which they ought to prevent. They believed that it would retard the settlement of Nova Scotia and Florida,

and expose these provinces to conquest by France and Spain; that it would produce a population impatient of restraint, and producing for themselves all that was necessary for their own comfort, contributing nothing to the prosperity of the mother country, and beyond her effective control. They had promised the Six Nations and the Indians of the Ohio to expel the French from the country.¹* When this promise was made they seemed not to have

¹ The inhabitants of Vincennes were by a proclamation issued the 8th of April, 1772, peremptorily commanded to retire within the jurisdiction of the English Colonies. Every French settlement was hostile to English authority, and the policy of Lord Hillsborough was to leave the country north of the Ohio and in the vicinity of the Lakes in the possession of the Indians alone.—See Bancroft's Hist. Vol V, ch. 47.

" They likewise repeated our promises made at the commencement of the war of removing the French and returning them their lands, that our hands should always be open to them if they would take up the hatchet, and that as we were a wealthy and trading people we should be able to supply them with goods at a very reasonable rate; all which they expected would have been performed, but they find themselves greatly mistaken, for instead of restoring lands we were erecting more forts in many parts of the country, notwithstanding the French were dead (as they called it) and goods were still sold so dear that their warriors and women were very uneasy and apt to believe every bad report concerning the intentions of the English."
—*Sir Wm. Johnson to Lords of Trade.*

"Your Lordships may please to observe by my letters before mentioned that I therein represented the jealousy which the Indians in general entertained of the increasing power of the English through the insinuation of French Missionaries and others who had persuaded them that we proposed their entire extirpation, to which they in a great measure give credit from our occupying some old posts, and erecting new ones throughout their country, the necessity of which they could not discover since the reduction of Canada." *Ibid.*

"I am apprehensive that our greatest care and precaution will scarcely be sufficient to prevent the French from supplying the Indians, our enemies, with ammunition by way of the Mississippi, as I well know that distance is little regarded by Indians."—*Ibid.*

"The French trading to the Lakes, are, by reason of their influence and our inactivity become factors for our traders, and amongst the Indians assume to themselves the merit of their having any trade at all, the better to effect which they are making repeated application for liberty to go from the outposts into the Indian country where they know our traders must stand but a poor chance, and they have set up the Indians to demand permission for that purpose; by these methods, by their superior address and knowledge of the different languages, they maintain their influence, enjoy the major part of the trade, whilst our traders are considered as interlopers and have it not in their power to acquire the good opinion or even a proper acquaintance with the Indians. Nor can I see how this will be prevented with regard to the French, who are now become British subjects, and will demand all privileges as such—and what is still more injurious to our Commerce, and dangerous to our security is, that the French from New Orleans, Illinois, and Canada as before observed, are continually in the Indian country to the westward with immense cargoes of goods, and perpetually instilling pernicious sentiments into the minds of a credulous people, who believe all they say, whilst from misconduct or neglect on our part they are confirmed in their opinion. Although the Spaniards should possess New Orleans, &c., and are a less active people, yet the French will still remain and act the same part under the Spanish Government which they practice under their own, whilst those at Illinois (now British subjects) having a property and interest in that country, and being all traders, will doubtless act in conjunction with them. The French have already carried up cannon and are erecting a post near the mouth of the Missouri, where a Frenchman is now established who carries on a vast, extensive trade, and is acquiring a great influence over all the Indian nations, which, with the French inhabitants at the Illinois, Assumption, Port Vincent, Ouatanon, Miami, Detroit, &c., are more than sufficient to engross all the trade in those parts. Nov. 1765." *Oroghan, N. Y. Hist. Doc. Vol. 7.*

" If Trading Posts are not established at proper places in that country soon, the French will carry the best part of the trade over the Mississippi, which they are determined to do if they can, for I have been well informed that the French are preparing to build a strong fort on the other side of the Mississippi, about sixty miles above Fort Chartres, and have this summer in a private manner transported twenty-four pieces of small cannon up the river for that purpose."—*Ibid.*

* N. Y. Hist. Doc. Vol. 7.

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anticipated the success which their armies achieved. They soon learned that the Indians of the West were as anxious to retain the French as the others were to get rid of them, and that to keep their promise would not only cause numerous acts of wanton cruelty, but would entail upon them a formidable Indian war. They had been forced to abandon the policy of expatriation. They did not look for emigration from France, and they earnestly set themselves at work to prevent, so far as it was in their power to do so, the settlement of the west. They felt that this could be better accomplished by making the country a part of Quebec than by retaining it without a civil government, as had been done during the eleven years which had elapsed. Two things were necessary to give them success—the extension of French law over the entire country, and the exclusion of the old colonists from the fur trade of the North-west. Royal instructions were issued to Sir Guy Carleton, placing the entire Indian trade under the government of Quebec.* It was said that the western trade was, contrary to law, carried on with New Orleans; that many of the French had gone far up the Mississippi and established forts and well supplied trading-houses upon its western shore; that they were sending their traders into the country purchasing their furs and supplying the Indians with goods obtained from New Orleans; that they had left the Indians under the impression that, were it not for them, they would be left destitute; and that they were drawing the trade even from the vicinity of the lakes beyond the Mississippi River. But this the English Ministry were ready to permit as a lesser evil than colonization. They did not feel sure that the course upon which they had entered would be successful if the English Colonists were permitted to navigate the Mississippi. They well knew that an imperial statute for this purpose would be as ineffectual as the King's Proclamation had been in preventing the settlement of the valley of the Ohio. They knew that the French colonists of the Illinois country wished to retain to themselves the fur trade of the Upper Mississippi. They had not long before shown a strong inclination to perpetuate the Indian War and to have that war renewed to prevent the other colonists from engaging in the trade. No other people could have the same interest in enforcing any measure necessary to this end. As no colonial law has any extra territorial force, the Legislature of Quebec could have had no effective control over the navigation of the Mississippi, unless the easement secured to British subjects was placed under the control of its Governor and Council. This view of the intention of Ministers is confirmed by the correspondence which passed between the Colonial Office and some of the Governors and other officers in America. If this part of the Imperial policy was never carried out, it was because Ministers at last saw that the policy which they supposed would produce submission had provoked war. The Duke of Grafton wrote to Lord North urging him to bring about a durable reconciliation. He warned the King against the unwise policy of Ministers, and of their misconception of the resources of the Colonists. He told the King that they had at first deluded themselves, and that they were now deluding him. When told by the King of the large number of foreign troops about to be sent to America, he said that twice the number might increase the disgrace, but could not effect their purpose.† Lord North distrusted the wisdom of the course that he was pursuing, and wished for a restoration of the ancient condition of

* See debate in the House of Lords, 1775, on Lord Camden's motion to repeal the Quebec Act.

† Bancroft's Hist. Vol. VI.; Lord Mahon's Hist. Vol. VI., Appendix p. 32.

things. It is not surprising, then, that a less harsh course was taken when a Government came to be constituted under the Quebec Act the following year. It must not be forgotten that the same Government which introduced the Quebec Act and carried it through Parliament, advised the King to grant a Commission to Sir Guy Carleton. Thurlow and Wedderburn were still the Law Officers of the Crown; and it is evident from the boundaries laid down in the Governor's Commission, that they understood the Quebec Act as extending the enlarged Province to the Mississippi river. The boundaries of the Province as set forth in the Commission to Sir Guy Carleton, in 1774, are the following:—

“Our Province of Quebec in America, comprehending all our territories, islands, and countries in North America, bounded* by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the River Connecticut; keeping the same latitude directly west through the Lake Champlain, until, in the same latitude, it meets with the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario and the river commonly called Niagara; and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said Province, until the said western boundary strikes the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at the point of the said bank which shall be nearest to the north-western angle of the Province of Pennsylvania; and thence by a right line to the said north-western angle of the said Province; and thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territory, islands, and countries which have since the 10th of February, 1763, been made part of the Government of Newfoundland, as aforesaid.”

In this commission the word *south*, which is found in the Act, is omitted, so that the boundary of the Province of Quebec, which Sir Guy Carleton was appointed to govern, could be specifically laid down upon the west as well as upon the south, with but little departure from the words of the Statute.

We have seen, then, that the grammatical construction of the words of the Statute required the extension of the Province to the Mississippi River; that the debate which took place upon the Bill, in both Houses, shows that it was the intention of its supporters to make the Mississippi the boundary upon the west; that the design, as stated in the preamble, for annexing the country west of the old Province was, to embrace the various French colonies and settlements, several of which were upon the bank of the Mississippi, and could only be in-

* All the copies of the Commission do not agree in this particular. The one in the office of the Secretary of State at Ottawa contains the words *on the south*, while they are omitted in the copy given by Masseres. The insertion of these words does not change the sense; but they obscure it, and if they really were in the original Commission they show that the Act was carelessly followed, without considering the effect of the additional words “along the eastern bank of the Mississippi.”

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cluded by making that river the boundary; that Lord Shelburne and other opponents of the measure, in moving for its repeal the following year, speak of the Mississippi River as the western boundary; and the colonists assumed, in their denunciation of the Act, that it had extended the Province of Quebec to the banks of the Ohio and Mississippi Rivers.¹ The various historians, English and American, have so spoken of it. Mr. Bancroft so understands the Act in his History of the United States. Mr. Adolphus, in his History of England, discusses the origin of the measure; he relates how, in 1771, "the King, by a special order, directed the reports and papers relative to the laws and [the Courts of Judicature, and the defects in the mode of governing Quebec, to be referred to the Advocate, Attorney and Solicitor Generals, to prepare a general plan of civil and criminal law; and they were subsequently directed to make separate reports to the King in Council, . . . on the basis of which a Bill was framed. . . . The limits thus extended stretch from Chaleur Bay along the southern coast of the St. Lawrence, almost to Crown Point; they were also, carried over the whole interior country which lay behind the New England Provinces, together with those of New York and Pennsylvania, to the borders of Ohio. The boundary line then proceeded westward through ten degrees of longitude to the eastern banks of the Mississippi, whence it extended northward to the southern boundary of the land granted to the Hudson's Bay Company, being from about the fortieth to the fiftieth degree of latitude."*

FRENCH COLONIES OF THE WEST.

It might be well here to state briefly the various colonies and settlements which had been established in the western part of Canada, and for which the English Government proposed to give protection by enlarging the Province of Quebec. We pass by those upon the Upper St. Lawrence and at Niagara, and shall commence with that at Detroit. Detroit had been for some time a military post before it became the centre of the French settlement. In 1686, the Marquis de Denonville urged upon the French Government the propriety of strengthening the fort at Detroit.[†] In 1688, Governor Dongan of New York, at the request of the Iroquois, demanded that the Forts of Cataracouy (Fort Frontenac), and Ticksaron-dic (Fort Detroit), should be demolished. But la Mothe-Cadillac was the first to establish a colony of French at Detroit, which he did in 1701.[‡] Major Rogers estimates the population of the colony at the time of its surrender to the English forces under his command, at

¹ Lord Camden, certainly the greatest constitutional lawyer of his day, in speaking of the limits of Quebec, on his motion to repeal the Act (May 17, 1775), says: "That there could be no good reason for so extending the limits of Quebec, as to make them comprehend a vast extent of country, two thousand miles in length, from North to South, and bounded on the west only by the South Sea." That is all Canada as surrendered to England, and as marked upon the map described by Mr. Falconer. The speech of Lord Camden shows what were supposed to have been the western limits above the source of the Mississippi. France, no doubt, claimed the country to the South Sea or Pacific Ocean, but we have here only claimed as within the limits of Canada so much as prior discovery and occupation gave her.

* Masseres Papers.

† Archives de Paris, 1ère Série, vol. III.; 2de Série, vol. V. p. 441. N. Y. His. D. c. vol. IX, pp. 296-318, 301, 302. Brodhead's Hist. of New York, vol. II, pp. 444, 489, 494.

‡ N. Y. Hist. Doc. vol. IV, p. 391. Charlevoix, Hist. vol. II, p. 270.

2,500, there being nearly 500 who bore arms; and the number of dwelling-houses he states at nearly three hundred. The colony extended along both the banks of the Detroit River for a distance of about eight miles. But it would seem from other sources, that the population was not so numerous as Major Rogers states it to be. Mante observes that, in 1764, there remained but a sufficient number of men to form three companies of militia; and it is certain that at the taking of the census in 1768, there were but 572.*

Michillimackinac was established by La Salle in 1679. It was always an important military post during the century that it was in the possession of the French. At the time of the conquest it contained about sixty families. The fort and settlement were upon the south shore of the Strait. One half the population resided within the palisades. They numbered between 400 and 500. Nearly all the men of this colony had served in the French army.†

Twenty miles to the west of Michillimackinac, at the entrance of Lake Michigan, there was an Indian village—L'Arbre Croche—where there was a French mission, a fort, and a few French colonists. There were also a few settlers at Saut St. Mary.‡

At Green Bay there was also a French colony, which had been founded before 1680, extending for several miles along both sides of the Fox River. There were at the time of the conquest between forty and fifty French and half-breed families at this point.§

The Colony of St. Joseph's was composed of persons who went thither from Detroit, and numbered about one hundred.||

The Colony of Ouatanon, on the Upper Wabash, contained about 130 inhabitants; but when this settlement was established is very uncertain.¶

Vincennes seems to have been first founded about the year 1710. M. de Vincennes was "Commandant au poste de Ouabache," which must have been this post, in 1735. It was situated upon the Wabash, 210 miles below Ouatanon, and contained, by the census of 1768, 427 inhabitants.**

After the English went into the possession of the Illinois country, very many of the French population abandoned the country, and removed beyond the Mississippi River. We find, not long after the English had acquired possession of the country, the northern Superintendent of Indian Affairs informing the Secretary of the Colonies that a considerable number had established a fort some distance up the Mississippi; had mounted cannon, and supplied themselves with such goods as were necessary to enable them to carry on a trade with the Indians. The population of Fort Chartres had diminished from 300 in 1764, to 15 in 1768, and St. Philip, from 150 to the same number. The total number in the Illinois country in 1768

* Bancroft's Hist., vol. V, ch. 38, Eng. Ed. Pitman's Mississippi, p. 44. Mante's Hist. Late War in N. America, p. 525. Rogers's Account of North America, p. 168.

† Henry's Travels, part I.

‡ Alexander Henry's Travels. Gorell's Journal.

§ Wis. Hist. Col. vol. II, pp. 71, 93, 104, 105.

|| Croghan's Diary.

¶ Ibid. Albach's Annals.

** Volney's View, p. 336. Bancroft's Hist. U. S., vol. III, p. 346. Law's Historical Address at Vincennes, 1839.

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was 1,358, and at the time of the passing of the Quebec Act, in all probability did not much exceed this number.*

There was another French colony at Prairie du Chien, near the junction of the Wisconsin with the Mississippi. Prairie du Chien contained at the time of the surrender to the English about 500 inhabitants, exclusive of Indians.†

There was a small French settlement at La Pointe near the south-western extremity of Lake Superior, and in the valley of Lake Winnipeg there were, according to M. Bougainville, about 700.‡ The preamble of the Quebec Act declares that it is desirable to embrace the French colonists who had, up to the time of its passage, been left without a civil government, within that province. Now how will this be accomplished by a line due north from the confluence of the Ohio and Mississippi? Within this line there would have been included,—

Detroit.....	572
Michillimackinac.....	540
St. Josephs.....	90
Green Bay.....	300
Ouatanon.....	126
Vincennes.....	427

Total..... 2,055

Without this line there would have been,—

Kaskaskias.....	903
Cohokia.....	300
St. Philip.....	15
Prairie Du Rocher.....	125
Fort Chartres.....	15
Prarie Du Chien.....	500
North-West Country..	700

Total..... 2,558

That is, out of a population of 5,000, more than one half would have been excluded from the benefits of a civil government which the Act was intended to confer upon all alike.§¹

* Gen. Gage to Hillsborough. 15th May, 1768, and 6th January, 1769. Pitman's Present State of European Settlements in America, 4to. London, 1770.

† Carver's Travels; Pike's Journal; Long's Journals; State Papers, Public Lands, Vol. 4.

‡ Memoir of M. de Bougainville.

§ Census of 1768, made by Commandants and others.

¹ "In the year 1716, the French population on the Wabash had become sufficiently numerous to constitute an important settlement which kept up a lucrative trade with Mobile, by means of traders and voyageurs. . . . In 1746 agriculture upon the Wabash was still flourishing, and the same year 600 barrels of flour were manufactured and shipped to the City of New Orleans, besides large quantities of hides, peltry, tallow and bees-wax.

"In the Illinois country also, the settlements continued to increase; so that in 1730 they embraced 140 French families, besides about 600 converted Indians, and many traders, voyageurs, and Coureurs des bois.

Before dismissing this part of the subject, an observation or two may be made in reference to the boundary above the sources of the Mississippi River. It has been before shown that a *northward* line may be drawn in any direction between north-east and north-west; that if there be no reason either from there being a natural boundary or from the thing to be accomplished, in producing this line to one point upon this plane rather than to any other point, then through the center of this space—that is due north—is the most suitable direction to draw the line, not because the definition of the word requires it to be so drawn, but because the space over which the direction of the line may be varied ought in fairness to be evenly divided. But when it is stated to be the intention of the law to include the various French colonies and settlements, and when we see that some of these were upon the Assiniboine and Saskatchewan Rivers, the line from the Mississippi northward must be so drawn as to include these; and a line so drawn to the North Saskatchewan, together with that part of the Mississippi above the confluence with the Ohio, formed the western limit of the Province of Quebec under the Quebec Act of 1774. We shall next see what further changes were made by the Treaty of Versailles, of 1783, by the King's order in Council, forming the Provinces of Upper and Lower Canada, by the Constitutional Act of 1791, and by the treaty of London in 1794.

ALTERATION OF THE BOUNDARY OF QUEBEC BY THE TREATY OF VERSAILLES, CONCLUDED BETWEEN GREAT BRITAIN AND THE UNITED STATES, 1783.

By the Second Article of the Treaty of 1783, the south-western part of Quebec was intended to be ceded to the United States of America. The boundary in that Article is described as follows:—

“From the north-west angle of Nova Scotia, namely, that angle which is formed by a line drawn due north from the source of the River St. Croix to the highlands; along the said highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westernmost head of the Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line *due west* on the said latitude until it strikes the River Iroquois or Cataraquy [St. Lawrence]; thence along the middle of the said river into Lake Ontario; through the middle of the said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said water communication into Lake Erie; through the middle of the said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into Lake Huron; thence through the middle of the said lake to the water communication between that lake and Lake Superior; thence through the Lake Superior, north of the Isles Royal and Phillippeaux to Long Lake; thence

Kaskaskia, in its best days under the French régime, was quite a large town containing 2000 or 3000 inhabitants. But after it passed from the Crown of France, its population for many years did not exceed 1500 souls. Under British Dominion in 1773 it had decreased to 450 souls.” Monette's *Discovery and Settlement of the Mississippi Valley*, Vol. I, p. 167.

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through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said Lake of the Woods to the most north-western point thereof, and from thence on a due west course to the Mississippi. . . ."

At the time the Treaty was negotiated, it was supposed that the River Mississippi had its source further north than the north-west angle of the Lake of the Woods, and that therefore, a line drawn due west from this angle would intersect the Mississippi River, as it would appear to do from Mitchell's map, said to have been the only one the Commissioners had before them when the Treaty was negotiated.^{1*} It would seem from what was subsequently written by Mr. Adams, and Mr. Jay, that it was not their wish to carry their boundary so far to the north as to exclude the banks of the Mississippi. Spain was at the time in possession of the mouth of the Mississippi. She had already denied to the people of the New Republic, the right to navigate the river through her territories. Great Britain had this right by the Treaty of Paris (1763), and the American Commissioners did not doubt, that so long as she possessed a country upon the banks of the Mississippi, she would retain it, and they believed that it would not be an easy matter for Spain to refuse to the citizens of the United States liberties that were conceded to the people of England.^{2†}

By the Treaty of Versailles, it was agreed that the navigation of the river should be free to England throughout its entire length, and this freedom was based upon the erroneous supposition that a part of the river lay within British territory. When Mr. Jefferson wrote to Mr. Breckenridge, in reference to the boundaries of Louisiana, in August, 1803, before the purchase of Louisiana from France was completed, he described the north-western boundary of the United States, under the Treaty of Versailles, as a line drawn "from Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States." And in the convention which was concluded on the 12th of May, 1803, between Great Britain and the United States, and to which Mr. Jefferson refers, a provision was made in the *fifth article*, that the line of boundary between the River Mississippi and the Lake of the Woods, should be the shortest line which could be drawn between these two points. Before this could be acted on by the Senate, the Treaty with France for the cession of Louisiana, was confirmed, giving to the United States the rights of France. The Government of the United States were at the time under the erroneous impression that the boundary west of the Lake of the Woods had been settled by Commissioners appointed under the Treaty of Utrecht, and that they had made the forty-ninth degree of north latitude the separating line,

¹ "*Mitchell's Map was the only one which the Ministers Plenipotentiary of the United States, and the Minister Plenipotentiary of Great Britain, made use of in their conferences and discussions relative to the boundaries of the United States, in their negotiation of the peace of 1783, and of the provisional articles of the 30th of November, 1872. Upon that map and that only, were the boundaries delineated.*""
John Adams to Jas. Sullivan, 2d August, 1796.

* See John Adams' Works, vol. VIII, pp. 210, 392, 398, 518, 519.

² As to the separate Article, we beg leave to observe, that it was our policy to render the navigation of the River Mississippi so important to Britain, as that their views might correspond with ours on that subject. *Their possessing the country on the river north of the line from Lake of the Woods, affords a foundation for their claiming such navigation.*"
The Commissioners John Adams, B. Franklin, John Jay and Henry Laurens to Secretary Livingstone, Paris 14th December, 1782.

† Adams' Works, vol. 8, p. 20.

and they, the United States Government, hoped to hold the territory south of this line, as Louisiana. The Senate, therefore, advised that the Treaty should be ratified without the fifth article. Great Britain declined to assent to the amendment, and the convention failed.¹

When a new commission came to be made out, in which the boundaries of Quebec were laid down, after the Treaty of Versailles had been ratified, it became necessary to follow the international boundary as far, but no farther, than the Province of Quebec extended. The Quebec Act was still in force. The boundaries named in it were to remain the limits during the pleasure of the Crown; and the Crown had exercised that pleasure by the Treaty of 1783, by which it had ceded the whole of the south-western part of the Province to the United States. If the western limit of the Province had been under that Act, the meridian of the confluence of the Ohio and Mississippi, the southern boundary of the Province subsequent to the ratification of the treaty would terminate at the point where this meridian cuts the international boundary. On the other hand, if the Mississippi was held to be the western limit by the description in the Quebec Act, it would still be necessary to go westward along the international boundary until the original limit was reached. This point is too clear to need further elucidation. We shall see how the law officers of the Crown in England understood the matter. On the 22nd of April, 1786, the King issued a new commission to Sir Guy Carleton. In this commission the *form* of the description given in the Quebec Act is followed. He is commissioned as "Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, comprehending all our territories, islands, and countries in North America, bounded on the *south* by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line *due west* on that latitude, until it strikes the River Iroquois, or Cataraqui; thence along the middle of the said river into Lake Ontario; through the middle of said lake until it strikes the communication, by water, between that lake and Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Phillipeaux, to the Long Lake; thence through the middle of said Long Lake and the water communication between

¹ "The northern boundary (of Louisiana), we have reason to believe, was settled between France and Great Britain, by Commissioners appointed under the Treaty of Utrecht, who separated the British and French territories, west of Lake of the Woods, by the 49th degree of latitude."—Madison to Livingston, 2 F. R. F. 574.

"Madison may have been mistaken in his belief. There is no evidence either in the French or British archives of the appointment of a boundary Commission under the Treaty of Utrecht, and in a Memorial of the Hudson's Bay Company, marked as received, August 13th, 1719, it is stated that the running of a line betwixt the English and French territories, yet remains to be done." Mr. Bancroft to Mr. Fish, Sept. 1st, 1873—MSS. Department of State, Washington.

The Commissioners were appointed, but their efforts at agreement were fruitless, as will be seen hereafter. Mr. Bancroft is mistaken in saying there is no evidence of the appointment of a Boundary Commission. The papers are among those of the Lords of Trade and Plantations. Entered in B'k. Plantations General, 1—47, O. No. 14, B. T.

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it and the Lake of the Woods to the said Lake of the Woods ; thence through the said lake to the most north-western point thereof; and from thence, on a *due west course*, to the River Mississippi, and *northward*¹ to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay ; and also all such territories, islands, and countries which have since the 10th of April, 1763, been made part of the Government of Newfoundland."

UPPER CANADA.

We have seen that the boundaries given to the Province of Quebec by the Act of 1774 did not in any way interfere with the King's prerogative. The boundaries set forth were to remain the limits of the Province during His Majesty's pleasure, and this pleasure His Majesty informed Parliament in 1791, that it was his intention to exercise a second time by separating and dividing the Province of Quebec, and Parliament was called upon to provide suitable systems of Government for the two new Provinces which the King had declared that it was his intention to establish. On the 19th of August, 1791, the Province of Quebec was divided by a line drawn north from Lake Temiscouing, to the boundary of Hudson's Bay. The Act of 1791 did not divide the Province of Quebec. It assumes that this power is vested in the Crown. It declares that "His Majesty has been pleased to signify by his message to both Houses of Parliament his Royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper, and the Province of Lower Canada." The King having thus expressed his pleasure to make, himself, the divisions, Parliament contents itself with providing a constitution for such Province.

A proclamation was issued on the 18th of November, 1791, by General Alured Clark, who was acting in the absence of Lord Dorchester, the Governor-General, to give effect to the Order in Council by which the division had been made. The proclamation is as follows :—

"George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. To all our loving subjects whom these presents may concern, greeting, Whereas we thought fit by and with the advice of our Privy Council by our Order in Council, dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada, and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, namely : 'To commence at a Stone boundary on the north bank of the Lake St. Francis, at the cove west of Pointe au Bodet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil ; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawas river, to ascend the said river into the Lake

¹ Here we have "*a due west course*" as descriptive of the direction of the western part of the southern boundary ; but what direction does the word *northward* here indicate ? In our opinion, it clearly applies to the territories, islands, and countries extending from the southern boundary to the possessions of the Hudson's Bay Company.

Tomiscanning; and from the head of the said lake by a line drawn north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

Now we have here to consider the meaning of this Proclamation:—whether it embraced in Upper Canada simply that portion of the Province of Quebec west of the separating line, or whether it included along with this that portion of Canada ceded to Great Britain in the north-west, by the Treaty of Paris, but which had not been included in the Province of Quebec by the Act of 1774?

It is true that the Act of 1791 declares in the preamble that "whereas the said Act," meaning the Act of 1774, "is in many respects inapplicable to the present condition and circumstances of the said Province," meaning the Province of Quebec; "and whereas it is expedient and necessary that further provisions now be made for the good government and propriety thereof." It was argued in the case of *De Reinhard* before Chief Justice Sewell and Mr. Justice Bowen, and held by them, that Upper Canada embraced so much of the Province of Quebec as was west of the separating line, and that the western limit of Upper Canada was a line drawn astronomically north, from the junction of the Ohio and Mississippi Rivers. On both points I think the judgment was erroneous. The case was not exhaustively argued. Many things necessary to a correct judgment were not brought under the notice of the Court. We shall, therefore, proceed to consider the limits of Upper Canada as set forth in the Proclamation of 1791, without reference to the decision of the Court in the case referred to.*

It is true the Act of 1791 refers to the division of the Province of Quebec. It is also true that the Act says nothing about the enlargement of the Province of Upper Canada beyond the limits of the Province of Quebec; but it must not be forgotten that the Act does not divide the Province of Quebec. It leaves the prerogative of the Crown to change the boundaries of Royal Provinces untouched. The instrument by which the division was made was the King's own act. He might have made this division whether Parliament legislated or not. It is to his instrument, and to his only, that we must look for the limits of Upper Canada. This fact seems in some measure to have been lost sight of in the trials of *De Reinhard* and *Maclellan*.

The power of the Crown to alter the boundaries of Royal colonies is undoubted. By the Treaty of Paris, 1763, France ceded the Island of Cape Breton to the King and Crown of Great Britain. The King by the proclamation of October 1763, annexed Cape Breton and Prince Edward's Island to the Government of Nova Scotia. In 1784 a separate government was given to Cape Breton by Royal Commission. In 1763 he limited to the Mississippi, by Treaty, Colonies which, by charters, extended to the South Sea. He assigned the boundaries of Florida and Georgia by Proclamation or by Letters Patent, and the boundary between Massachusetts and New Hampshire by Order in Council.

Now the simple question that here presents itself is, did the Act of 1791 in any way limit the prerogative of the Crown in the case of Upper Canada? It is clear that it did not. Before the plan upon which the King had resolved could be carried out.

* See the case of *Conolly v. Woolrich et al.*, L. C. Jurist, Vol. XL, p. 197.

Quebec must be divided. His plan was to make two Provinces, each of which was to have a representative Assembly. His Ministers asked the sanction of Parliament to the plan of Government that they were about to provide; but they did not consult Parliament as to the extent of country which each Province was to embrace. Except, then, that Quebec was to be divided into Upper and Lower Canada, we learn nothing from the Act. This statement is made in the Act not for the purpose of describing their boundaries, but to assign a reason for the proposed legislation. It is the Proclamation by which the division is made known, and it is to the Proclamation we must look for the limits of those Provinces. What then does the Proclamation say in reference to the limits of Upper Canada? It declares that it shall embrace "all the country to the west and south," of the separating line, "to the utmost extent of the country commonly called or known by the name of Canada." If it had named Quebec it would have said so, but it does not; and it will be shown that the word Canada has not in these statutes been confounded with the word Quebec. When we examine the Quebec Act (1774) we shall see with how much care the framers attended to its phraseology. In the debate, the words Canada and Quebec were used indifferently by many of the speakers, but there is no such confusion in the statutes: both words occur in the Act; the word Canada frequently occurs, but never as the name of the Province of Quebec. In the preamble it is said that "certain parts of the territory of Canada where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the Government thereof." Here the name Canada is applied to the Province under the *régime of France*, and the grants and concessions before the conquest.

In section 4, it is said that the provisions made by the Proclamation in respect to the Civil Government of the Province of Quebec, has been found upon experience inapplicable; that at the conquest above 65,000 persons *enjoyed an established form of constitution and system of Laws, from the first establishment of the Province of Canada.*

In section 8, the people of the Province of Quebec are called *His Majesty's Canadian subjects within the Province of Quebec*, and under the same section it is provided that "in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same, and all causes . . . shall be determined agreeably to the said laws and customs of Canada." Here it is very apparent that the term Canada is applied to the Province, as it was under the Dominion of France, and the laws of Canada are the laws which prevailed while the country was subject to the Crown of France.

In section 10 the laws of Canada are again spoken of in the same sense, so that it is perfectly obvious that the framers of the Quebec Bill were particularly careful to distinguish between the Province of Canada and the Province of Quebec.

The territory which England had acquired from France by the Treaty of Paris was designated as the Province of Canada until the issue of the Royal Proclamation constituting the Province of Quebec. The Commission to Nicholas Turner, in September, 1763, a fortnight before the Proclamation was issued, made him Provost Marshal of the Province of Canada. So that wherever the Province of Canada is spoken of it refers neither to the Province of Quebec as constituted by the Proclamation of 1763, nor to the Province of Quebec as enlarged by the Act of 1774.

It is with a Province designated the Province of Quebec that the Act of 1774 deals. In

every instance in which the Province of Canada is spoken of it is as a French and not as an English Province. The Quebec Act in no way attempts to indicate its limits. The territory upon the east, which was annexed to Newfoundland in 1763, and by the Quebec Act is taken from Newfoundland and joined to Quebec, was never claimed as belonging to England. It was not in dispute during the seven years' war; it, therefore, continues in the preamble to be spoken of as a part of the Territory of Canada, and the inhabitants of that country are spoken of as inhabitants of the Province of Canada. But the colonists of the south-west are not so designated. The name Canada, as applied to their country, was dropped, for the reasons already mentioned, and they are spoken of as subjects of France "within an extent of country." What the limits of Canada were under the French, upon the south and the west, we have already stated with sufficient precision. We have also shown how much of the vast region so called was retained by France under the Treaty of Paris. There was no mistake in making the limits of Upper Canada coincide with those of Canada, and we cannot, without wholly ignoring the distinctions designedly made between Canada and Quebec, confound them in the Proclamation, where we must look for the limits of Upper Canada. It was obviously the intention of the King and his advisers to give to the Province of Upper Canada more enlarged boundaries than it had as a part of the Province of Quebec. If we look at some of the State Papers of that period we shall discover why it was that the British Government intended to do something more than simply divide the Province of Quebec.

By Article four of the Treaty of Versailles (1783), it was agreed that "Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts heretofore contracted."

And by Article seven, it was agreed "That His Britannic Majesty shall, with all convenient speed, . . . withdraw all his armies, garrisons, and fleets from the said United States, and from every port, place and harbour within the same, leaving in all fortifications the American artillery that may be therein."

In many of the States, serious impediments existed to the collection of debts under Article four. In some of the States the feeling was such towards the expatriated loyalists that they dared not return to collect the sums that were due them. But in most cases the impediments were thrown in the way by the legislators of the States. They were impediments created by the law, and such as the Treaty forbade. Congress had no power to compel the States to fulfil the provisions of the Treaty which had been concluded; and Great Britain, in consequence, declined to surrender the military posts within the United States frontier. Congress did not represent the people, nor could it act directly upon them. It could act only by requisitions upon the State governments; and in many cases its demands were little heeded. The Confederate Assembly was simply a diet of envoys that could not carry into effect its own behests. This was done only so far as the governments of the different States chose to enforce them. The new Republic was in great danger of dissolution from the absence of necessary agencies to give effect to those measures which it had an undoubted right to pass. The feeling of hostility towards the loyalists who had fought under Butler and McKee and others, was most intense, and the British Government felt themselves bound in honour not to abandon them.¹ And the military posts

¹ "The Comte (de Vergennes) said it was not astonishing that the British Ministry should insist upon compensation to them (the loyalists), for that all the precedents were in favour of it; that there had been

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that were in the actual possession of the English at the close of the war, were held as a security for the enforcement of the claims of colonial loyalists. At all events this was the case at the beginning, but we shall see that other considerations exercised a controlling influence at a later period.

The Government of the United States were afraid that the country would never be yielded up to them. The English authorities, shortly after the peace, had become aware of their mistake, and they wanted a decent pretext for repudiating a boundary which ought never to have been agreed to. The success of the United States during the war gave them no claim to any of the country north of the Ohio, except in the Illinois country. The various communications between the United States Commissioners and M. de Vergennes, made them aware of the fact that England had yielded them much more than France was willing they should possess. Spain was endeavouring to obtain possession of both banks of the Mississippi. The United States government were afraid of losing the country north of the Ohio. They felt they must obtain at once the possession of the military posts, or the country would be lost to them. Accordingly Mr. Adams, the United States Minister to England, addressed the following memorial to Lord Carmarthen in reference to the withdrawal of the British troops from the territory of the United States :—

"The subscriber, Minister Plenipotentiary from the United States of America, has the honour to represent to the Ministry of His Britannic Majesty, that by the Seventh Article of the preliminary Treaty of Peace, between His Majesty and the United States of America, signed at Paris on the thirtieth day of November, one thousand seven hundred and eighty two, confirmed by the Definitive Treaty of Peace, signed at Paris on the third day of September, one thousand seven hundred and eighty three, it was stipulated that His Britannic Majesty should, with all convenient speed, and without causing any destruction or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the United States, and from every port, place, and harbour within the same, leaving in all fortifications the American artillery that may be therein.

"That although a period of three years has elapsed since the signature of the Preliminary Treaty, and of more than two years since that of the Definitive Treaty, the posts of Oswegatchy, Oswego, Niagara, Presque Isle, Sandusky, Detroit, Michillimackinac, with others not necessary to be particularly enumerated, and a considerable territory round each of them, all within the incontestable limits of the said United States, are still held by British garrisons, to the loss and injury of the said United States.

"The subscriber, therefore, in the name and on behalf of the said United States, and in obedience to their express commands, has the honour to require of His Britannic Majesty's Ministry, that all His Majesty's armies and garrisons be forthwith withdrawn from the said United States, from all and every of the posts hereinbefore enumerated, and from every port,

an example of an affair like this, terminated by a treaty, without re-establishing those who had adhered to the old government in all their possessions. I begged his pardon in this, and said that in Ireland, at least, there had been a multitude of confiscations without restitution."—Adams' Works, vol. III, p. 305. Adams, we suppose, refers to the losses sustained by those who adhered to the fortunes of James II.

place, and harbour within the territory of the said United States, according to the true intention of the treaties aforesaid.

"Done at Westminster, this thirtieth day of November, one thousand seven hundred and eighty-five.

"JOHN ADAMS."*

To this memorial Lord Carmarthen replied, on the 28th of February, 1786. He said: "I have to observe to you, Sir, that it is His Majesty's fixed determination upon the present, as well as upon every other occasion, to act in perfect conformity to the strictest principles of justice and good faith. The seventh Article, both of the Provisional and of the Definitive Treaties, between His Majesty and the United States, clearly stipulates the withdrawing with all convenient speed, His Majesty's armies, garrisons, and fleets from the said United States, and from every port, place, and harbour within the same; and no doubt can possibly arise either respecting the letter or spirit of such an engagement. The fourth Article of the same Treaties as clearly stipulates that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted.

"The little attention paid to the fulfilling of this engagement on the part of the subjects of the United States in general, and the direct breach of it in many particular instances, have already reduced many of the King's subjects to the utmost degree of difficulty and distress. Nor have their applications for redress to those whose situations in America naturally pointed them out as the guardians of the public faith, been as yet successful in obtaining them that justice to which, on every principle of law as well as of humanity, they were clearly and indisputably entitled. The engagements entered into by the Treaty ought to be mutual, and equally binding on the respective contracting parties. It would, therefore, be the height of folly, as well as injustice, to suppose one party alone obliged to a strict observance, while the other might remain free to deviate from his engagements as often as convenience might render such a deviation necessary, though at the expense of its own national credit and importance."

General Washington had some time before sent Baron Steuben to get possession of Detroit. He gave the Baron orders, if he thought it advisable, to embody the French of that place into a military force, and to place the town in their hands. General Haldimand declined to give him permission to enter the western country, and he was obliged to return to the United States.†

In 1786, the United States was involved in a boundary dispute with Spain. The Spanish Government also refused them the liberty to navigate the lower Mississippi. The government and people of the United States argued that they had this right as a part of the British Empire under the Treaty of 1763, and having succeeded to the British possessions, along a considerable part of the left bank of the Mississippi River, they had not lost the rights which they had under the Treaty of Paris. After the war of 1776 began, the Spanish Government informed the United States authorities that they regarded the territories named in the Royal Proclamation of October, 1763, as being "reserved for the present for the use of Indians," as

* Adams' Works, vol. VIII.

† Albach's Annals.

‡ Simcoe MSS, Library of Parliament; Garneau, Vol. II, p. 512.

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a fair subject of conquest, and as open to Spain to acquire as to the United States. They said that the territory west of the mountains and upon the east side of the lower Mississippi, towards Georgia and the Carolinas, was beyond the recognized limits of the thirteen colonies, and was as open to Spain to acquire by conquest or otherwise as it was to the United States.* The Spanish merchants, after the ratification of the Treaty of Versailles, continued to send their goods into the Illinois country and up the Wabash to the Colony of Vincennes. They held possession of the Mississippi, and they sent their gun-boats into the Ohio. In October, 1786, a board of United States field officers garrisoned that point. They took all necessary steps to give effect to this determination. Spanish merchandise was seized, and they resolved that no Spanish goods should be permitted to ascend the Mississippi unless Spain permitted the free navigation of that portion of the river which lies within Spanish territory.†

The settlers of Kentucky were much divided. Some were for forming a new republic, some for an alliance, and some for a war with Spain, and not a few who were ready to submit to the sovereignty of the British Crown, if the free navigation of the river could not otherwise be secured.‡

In a letter dated December 4th, 1786, written by one Thomas Green of Louisville, and widely circulated throughout the various States of the Republic, it is stated that "Great Britain stands ready, with open arms to receive and support us. They have already offered to open their resources for our supplies. When once reunited to them, farewell, a long farewell to all our boasted greatness. The Province of Canada [Quebec] and the inhabitants of these waters, of themselves, in time, will be able to conquer you. You are as ignorant of this country as Great Britain was of America. These are hints which, if rightly improved, may be of service; if not, blame yourselves for the neglect."§

In 1787, the famous ordinance was adopted by Congress for the government of the country north of the Ohio, providing for the formation of States in the future. The policy consequent upon this measure led to a war with the Indians. The existence of the Republic was endangered by a union of the English, Spanish and Indian interests, and by interested parties in Kentucky. In November, 1788, Dr. Connelly went to Kentucky from Quebec. He told Colonel Marshall that if the people in the Valley of the Ohio would assert their right to the navigation of the Mississippi, Lord Dorchester, the Governor-General of Quebec, and Commander-in-Chief of the British forces in America, would assist them; that he had nearly six thousand British troops in the Provinces; that he was prepared to furnish them with arms, ammunition, clothing and money; that with this assistance they could take New Orleans, fortify the mouth of the river, and hold it against Spain.|| The British authorities in Canada pressed upon the Colonial Minister the propriety of establishing, with the consent of the Spanish authorities, a fortified trading-post west of the Mississippi, and nearly opposite the mouth

* Pitkin's History of the United States, Vol. II, p. 92; Life of John Jay, Vol. I, p. 108; Jefferson's Correspondence.

† Secret Journals Vol. IV, pp. 63-132, 297-301; Marshall's History of Kentucky, Vol. I. Gayarre's Spanish Domination in Louisiana.

‡ Spark's Washington, vol. IX.; Butler's Kentucky, vol. I.

§ Secret Journals, vol. IV. p. 223.

|| Marshall's History of Kentucky, vol. I. p. 305; Gayarre's Spanish Domination in Louisiana; Albach's Annals, pp. 484-517.

of the River Wisconsin. They proposed that lands should be purchased from the Indians, and posts established for the purpose of carrying on the fur trade in the Territories of Spain, as well as in Upper Canada. They proposed that goods should be sent to Michillimackinac to the King's Superintendent, to the value of £500 each year, to be forwarded to the Agent of the Mississippi post. They purposed engaging in ship-building in this region, and carrying on a trade with Louisiana, beneficial alike to Upper Canada and New Spain. They suggested that, in consideration of this arrangement, England might guarantee Louisiana against encroachment on the part of the United States.*

The American officials told the Indians that the English at the Treaty of Peace had surrendered the Indian lands to the United States. This the English Government denied. They said that they had always recognized the Indians as proprietors of the soil. They pointed to the correspondence between themselves and the French Government, in reference to the construction of the fifteenth Article of the Treaty of Utrecht, as an evidence of the extent to which they recognized the proprietary rights, and, for purposes of trade, the independence, of the savages. They denied having surrendered to the United States any greater interest than they themselves had claimed. They further claimed the right to interfere in the matter for the purpose of protecting the rights of the Indians as their allies.† In August, 1791, Lord Dorchester told the Indians that the Americans had violated the Treaty, and that they had no right to any of the country north of the Ohio or west of the boundary fixed by the Treaty of Fort Stanwix, in 1768. In February, 1794, Lord Dorchester, addressing the Deputies of the Indian confederacy said: "I was in expectation of hearing from the people of the United States what was required by them; I hoped that I should have been able to bring you together and make you friends. I have waited long and listened with great attention, but have not heard one word from them. I flattered myself with the hope that the line proposed in the year '83, to separate us from the United States, *which was immediately broken by themselves as soon as the Peace was signed, would have been mended or a new one drawn in an amicable manner*, but here also I have been disappointed. Since my return I find no appearance of a line remains; and from the manner in which the people of the United States rush on and act and talk on this side, and from what I learn of their conduct towards the sea, I shall not be surprised if we are at war with them in the course of the present year; and if so a line must be drawn by the warriors.

"You talk of selling your lands to the State of New York. I have told you that there is no line between them and us. I shall acknowledge no lands to be theirs which have been encroached on by them since the year 1783. They then broke the peace; as they kept it not on their part, it doth not bind on ours. They then destroyed their right of pre-emption. Therefore all their reproaches towards us since that time, and all the purchases made by them, I consider as infringement on the King's rights. And when a line is drawn between them and us, be it in peace or war, they must lose all their improvements and houses on our side of it. Those people must all be gone who do not obtain leave to become the King's subjects."[‡]

* Letters of Lord Dorchester, Lieutenant Governor Simcoe, Right Hon. Henry Dundas, Mr. Bruce, Captain Stevenson, Mr. Hammond and others, in the Simcoe Papers, MSS.

† Simcoe Papers, MSS. Stone's Life of Brant.

‡ Albach's Annals, p. 633.

In April, there to prevent between the British and Americans wide stretch of the Indian territory.

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In April, 1794, Governor Simcoe was sent to the Rapids of the Miamis to erect a fort there to prevent the encroachments of the Americans. A considerable correspondence passed between the English Ministry and the Governors of the Provinces and other military men in British America in reference to a new international boundary. It was proposed that a wide stretch of country south of the lakes should remain in possession of the Indians; that the Americans should hold the territories to the south, and the English to the north, of this Indian territory.

The boundary was to be so drawn as to leave the English in possession of the lakes. Sir Henry Dundas directed Lord Dorchester to communicate to him his views with regard to a boundary favourable to the interests of British America. Lieutenant-Governor Simcoe was required, should the United States troops undertake to pass north of the forts, "to repel force by force, as both shores of the lakes are in His Majesty's possession."*

It is not necessary to refer further to the correspondence for the purpose of showing that the boundary line formed by the Treaty of 1783 was not regarded at the establishment of the Province of Upper Canada in 1791, by the Crown or its advisers, as a subsisting international boundary; that the English ministry intended to include the Indian country south of that boundary within the limits of Upper Canada, can be easily shown. Reference need only be made to a few official acts and a few facts of history as conclusive upon this point. When Upper Canada was constituted, at the first general election, a writ was issued by the Lieutenant-Governor, inviting the electors of the Town of Detroit to return a representative to the Legislative Assembly of Upper Canada. They did so. And Detroit was represented in that Assembly until after the ratification of the Treaty of 1794. Why was Detroit so represented? Obviously because, as the Governor-General, Lord Dorchester, declared, there was no longer any boundary between the United States and the British possessions, and because, by the proclamation of 1791, it was intended to include all the British possessions south of the Hudson's Bay country and west of Lower Canada, in the Province of Upper Canada. The Upper Canada Legislature provided for the establishment of permanent Courts at Detroit and at Michillimackinac as being places within the limits of the Province, and these Courts were established by the Government of the Province. By the second Article of Jay's Treaty, Great Britain agreed to withdraw from the posts which she held south of the line of 1783, on or before the 1st day of June, 1796; and it was not until two days after the expiration of the time so fixed that the Legislature of Upper Canada passed an Act repealing the law providing for the holding of Courts at Detroit and Michillimackinac.

Officers of the civil government, too, were managing public affairs, and administering justice at various other points south of the boundary of 1783, in the same manner as under the Act of 1794. There was a Lieutenant-Governor of Detroit, and another at Michillimackinac down to the time of the establishment of the Province of Upper Canada; but after 1791, the appointment of magistrates at these places was made by Governor Simcoe, not as the chief military officer of the west, but as Governor of Upper Canada, as will be seen from the following letter:—

Navy Hall, 22nd June, 1793.

Sir,—His Excellency Lieutenant-Governor Simcoe directs me to acquaint you that he has been pleased to appoint you a magistrate, and has ordered the Secretary of this Province

* Simcoe Papers MSS.

to transmit you a commission for that purpose. I am to request you to be so kind as to send by the first convenient opportunity to the Attorney-General of this Province, residing at Niagara, the best evidence and depositions possible respecting M.M. Langdale (Langlade) and Gautiere, (Gauthier de Niverville) of the Indian Department.

I am etc., etc.,

E. R. LITTLEHALES.

Captain Doyle, 24th Regiment,
Commanding at Michillimackinac*.

These facts show very clearly that Upper Canada extended to the south and west of the boundary of 1783, as far as the adverse possession of the United States would permit. The Illinois country was not practically included, for it had been in the possession of the United States from the time that it had been conquered by Colonel Clark of Virginia. But the British held the entire basin of the Great Lakes and the Valley of the Mississippi north of the Illinois country. The Government of the United States had been successful in their war with the Indians. In 1794 the Western Tribes were defeated by General Wayne, and the time came when the Canadian authorities were obliged to advise the Indians to make peace or to assist them by force of arms. The position was critical. England was already involved in war with the French Republic. The policy of repairing the blunders of 1783 was given up; and a new treaty commonly known as Jay's Treaty was agreed to by the two governments. The treaty of 1794 confirmed the separating line established by the Treaty of 1783. But it secured to the King's Canadian subjects the privilege of carrying on the fur trade within the territories of the United States. By Article II. it is agreed that "His Majesty will withdraw all His troops and garrisons from all parts and places within the Boundary lines assigned by the Treaty of Peace to the United States. This evacuation shall take place on or before the first day of June, 1796, and all the proper measures shall in the interval be taken by concert between the Government of the United States and His Majesty's Governor-General in America, for settling the previous arrangements which may be necessary respecting the delivery of the said posts; the United States in the mean time at their discretion extending their settlements to any part within the said boundary line except within the precincts and jurisdiction of any of the said posts. All settlers and traders within the precincts or jurisdiction of the said posts shall continue to enjoy unmolested all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there or to remove with all or any part of their effects; and it shall also be free to them to sell their land, houses or effects, or retain the property thereof at their discretion; such of them as shall continue to reside within the said boundary lines shall not be compelled to become citizens of the United States or take any oath of allegiance to the government thereof, but they shall declare their election within one year of evacuation aforesaid; and all persons who shall continue there after the expiration of the said year, without having declared their

* Simcoe Papers, MSS.

1 The Government of the United States acted upon the assumption that the boundary of 1783 was a continuously subsisting boundary, and the laws of Upper Canada which were extended over a considerable portion of the territory covered by the congressional ordinance of 1787, were, after the territory came into possession of the United States treated as null.

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vol. I, pp. 116, 117.

intention of remaining subjects to His Britannic Majesty, shall be considered as having elected to become citizens of the United States."

By Article III. it is agreed that "it shall at all times be free to His Majesty's subjects, and citizens of the United States, and also to Indians dwelling on either side of the boundary line freely to pass or repass, by land or inland navigation, into the respective territories or country of the two parties on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this Article does not extend to the admission of vessels the United States into the sea-ports, harbours, bays or creeks of His Majesty's said territories, nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading *bona fide* between Montreal and Quebec under such regulations as shall be established to prevent the possibility of any frauds in this respect; nor to the admission of British vessels from the sea into the rivers of the United States beyond the highest ports of entry for foreign vessels from the sea: the River Mississippi shall, however, according to the Treaty of Peace, be entirely opened to both parties. . . ."

The rights which were secured to Canadian traders by this treaty remained in force until after the war of 1812. At that time, Michillimackinac, Green Bay and Prairie du Chien were captured by the British, and the inhabitants of these places actively supported the English forces in 1814, still regarding themselves as British subjects. They subsequently endured no small amount of harsh treatment at the hands of United States officials for having taken part with the British in the war.¹

It now becomes necessary to consider how the country west of Lake Superior was regarded at this time. Between the period of the fall of Quebec and the year 1766, the trade by the lakes and the St. Lawrence was greatly interrupted by the Pontiac war. Few of the old French commanders remained in the country. They were, as we have seen, men of education with strong national feeling, and for the most part officers of the army; and they withdrew from Canada when it became a British possession. There were a few, how-

¹ "It is a matter of history that the British took Mackinaw and subjected its dependencies to their government, including all the afore-mentioned places (Sault Ste. Marie, Prairie du Chien and Green Bay). 'The most part of the inhabitants' were ignorant Canadians, who supposed themselves British subjects, not aware that if they did not, within a year, choose, as stipulated in the Treaty of 1794, to continue British subjects, they became American citizens; and when the British Government took military possession of the country during the war of 1812-15, the military officers in command considered them as British subjects, and ordered them to do military duty as militia. They were a conquered people, and feeling that they owed no allegiance to the United States, took up arms in obedience to the orders of the British officers. There were some among them intelligent enough to know their position, but had they claimed to be American citizens and refused to take up arms, surrounded as they were by hostile Indians, they would not have been safe, especially as the British officers did not believe in a British subject expatriating himself, and of course there was no law of the United States in the conquered country to submit to. Notwithstanding all these circumstances being known to the officers of the army stationed at Sault Ste. Marie under Major Cutler, they got up a remonstrance to the Government, representing these people as traitors, in consequence of which the patents [for the lands which had been long in their possession] were delayed, to the great annoyance and sometimes to the great injury of the claimants."—Hon. James H. Lockwood, of Prairie du Chien. Wisconsin Historical Collection, vol. I, pp. 116, 117.

ever, who remained behind, and whose names we find years later connected with the fur trade of the north-west.¹

Captain Carver, who visited the country north of Lake Superior in 1767, says that on the waters which fall into Lake Winnipeg "the neighbouring nations take great numbers of excellent furs; some of these they carry to the factories and settlements belonging to Hudson's Bay Company, situated above the entrance of the Bourbon River; but this they do with reluctance on several accounts; for some of the Assinipoils and Killistinoes, who usually traded with the Company's servants, told me that if they could be sure of a constant supply of goods from Michillimakinac, they would not trade anywhere else."

The fur trade had been revived by the English of Canada and New York immediately after the peace. Messrs. Henry, Tracy, Solomons, and Bostwick are mentioned in Henry's Travels as being present at Michillimakinac at the time the garrison was massacred, having gone there for the purpose of carrying on trade with the Indians.

Under the French Government the fur trade was subjected to a variety of regulations which were established and enforced by the authority of the King, or by the Governor of Canada.* The remains of this system were preserved upon the advice of the Indian Department after the conquest. No person was allowed to go into that portion of country lying to the north-west of Detroit without a license. And the exclusive right of trade in particular districts was sometimes granted to particular individuals by the military commanders at the posts, or by the Governor of the Province.† We find in Henry's Travels, that in 1765 he enjoyed the exclusive right of trade upon the shores of Lake Superior, in virtue of a license obtained from the Commandant at Fort Michillimackinac; and in 1781, Messrs. Grant and Dunn obtained a license to trade for fourteen years at the posts of the north-west.‡

When the English began to engage in the fur trade of the north-west, they employed the *coureurs des bois* to convey their goods to the Upper Mississippi and into the north-west territories. The trade by the way of the lakes was rapidly resuscitated, and extended from the Missouri River to the Polar Sea, and westward to the Rocky Mountains. One of the English traders—a Mr. Thomas Currie—in the autumn of 1766, accompanied by several guides and

¹ M. de Bellestre, the last commandant under French rule at Detroit, remained. He was sent to Detroit just before the conquest. Vaudreuil, in June, 1760, wrote to M. Berryer: "M. Bellestre is preparing to receive the English, who, I think, are not going to Detroit; it may cost them very dear, because all the nations are disposed to join the French." Bellestre remained in Quebec, and was made a member of its Legislative Council. He fought against the Americans in the war of the Revolution. M. Joncaire resided at Detroit, and served with the British forces during the war of the Revolution; but upon Jay's Treaty taking effect in 1796, he remained upon the American side of the boundary; and when a territorial government was established in 1798, Joncaire was elected a member of the first Assembly. One of the sons of M. de la Verendrye remained in the north-west territory, and was for many years connected with the Fur Trade. Charles Langlade was conspicuous in the war against England. He acted as captain at Mackinac, under the orders of Vaudreuil. In 1760 he was commissioned by Louis XV., and appointed to the command at Mackinac. He was present at the massacre of the garrison in 1763. He was made a J. P. by Simcoe.—N. Y. Hist. Doc., Vol. X, pp. 1093-94. MSS. papers of Lieut.-Governor Hay, of Detroit. Christie's Canada. Alexander Henry's Journal from 1799 to 1811, MS. Martin's Louisiana, vol. II, p. 335. Marbois' Louisiana, p. 163.

* These regulations were very frequently changed. See numerous papers upon the subject in the N. Y. Hist. Doc., and in the Quebec MSS.

† Sir Wm. Johnson's Correspondence. Henry's Travels, 1761-1776.

‡ Upper Canada MSS.

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interpreters, went to Fort Bourbon, on the Saskatchewan, and returned after a most fortunate adventure in the following spring. Within a very short period of time an animated competition prevailed among the fur traders, and occasional conflicts ensued which pointed to the necessity of union.* Mr. Hearne, whose journal appeared in 1771, says: "The northern Indians by annually visiting their southern friends the Athapascow Indians, have contracted the small-pox, which has carried off nine-tenths of them, particularly those people who compose the trade at Churchill Factory. The few survivors follow the example of their southern neighbours, and trade with the Canadians who are settled in the heart of the Athapascow country. I was informed by some northern Indians that the few who remain of the Copper tribe have found their way to one of the Canadian houses in the Athapascow Indians' country, where they get supplied with everything at less or about half the price they were formerly obliged to give; so that the few surviving northern Indians, as well as the Hudson's Bay Company, have now lost every shadow of any future trade from that quarter, unless the Company will establish a settlement within the Athapascow country and under-sell the Canadians."† From this it will be seen that before the year 1771 the Canadians had established themselves in the region of Lake Athabasca.

The country was visited in 1775 by Alexander Henry, who gives an account of his journey from Lake Superior to Beaver Lake, north of the Saskatchewan. He refers to Mr. Pond, whom he speaks of as a trader of some celebrity in the north-west, who had joined him on the north side of Lake Winnipeg. In September of that year they were overtaken by Messrs. Joseph and Thomas Frobisher and by Mr. Patterson, and their united parties composed a fleet of thirty canoes and one hundred and thirty men. Mr. Henry says they reached Cumberland House, a factory of the Hudson's Bay Company, situated in latitude fifty-four degrees and 102° longitude west from Greenwich. This house was built by Mr. Hearne in 1774, and was at the time garrisoned by Highlanders from the Orkney Islands. Mr. Henry says that M. Cadotte, a resident of the Saut St. Mary, went to Fort des Prairies, and Mr. Pond to Fort Dauphin; so that it would seem that these posts continued to be occupied from the time of the French. The Messrs. Frobishers and Henry, with forty men, built a fort at Beaver Lake; and on his journey towards the Fort of Des Prairies he writes of passing the old wintering ground of a Mr. Finlay, who had left it some years before, and was then stationed at Fort Des Prairies.‡

In the year 1775, Joseph Frobisher met the Indians from the region of Lake Athabasca at Portage de Trait , so named from the circumstance that here in latitude 55° 25' north, and longitude 103° 15' west, he trafficked with the Indians.

Thomas Frobisher explored the country still farther west and reached the shore of Lake Isle   la Croix, in latitude 55° 26' north, and latitude 108° west.

Mr. Peter Pond, who was the representative of a joint stock company, was directed by them to enter English River, to follow the track of Frobisher, and to proceed to Lake Athabasca. He encamped on the banks of the Elk River, about thirty miles from Lake Athabasca, where he passed the winter of 1778-9; met a great number of Indians who were

* Mackenzie's History of the Fur Trade; Harman's Journal.

† Hearne's Journal, 1771.

‡ Henry's Travels, pt. II, chaps. 8, 9, 10.

pleased at his coming. They supplied him with all the provisions he required during his residence among them, and a sufficient quantity for his homeward voyage. His success was beyond his expectations. He procured double the quantity of furs that his canoes could carry. What he did not take with him he packed away in one of his winter huts, and they were found the following season in the same state in which he had left them.

Pond was tried in 1781, at Montreal, for the murder of Wodin, who was shot in the latter part of 1780. The murder took place high up the English River at Lake La Rouge. Mr. Wodin was a Swiss, a fur trader of strict probity and sobriety. Pond, who was violent and unprincipled, had before been implicated in the death of a fur trader named Ross; he was released on the ground that the courts of Lower Canada had no jurisdiction in those distant regions. Pond went to Boston, his native city, in 1782.

In 1781-2, the Canadians, who were much reduced in numbers, in consequence of the lawlessness which prevailed, became confined to two parties, who began to make permanent establishments as far north as English River and Lake Athabasca. In 1783 the North-West Company was formed at Montreal, with a capital which was divided into sixteen shares; no portion of it was deposited. In the spring following, two of the shareholders went with their credentials to the Grand Portage, near the head of Lake Superior, for the purpose of seeing the principal traders whom it was thought desirable to embrace in the Company. The arrangements which were made were agreed to and ratified by all the parties except Peter Pond, who was not satisfied with the share allotted him. Accordingly he and another gentleman, a Mr. Peter Pangman, who had a right to be a partner but for whom no provision had been made, returned to Montreal to organize another company, intending if successful to go to the north-west for the purpose of superintending the trade. Pond was well acquainted with the north-west country; he had wintered three years at Fort Chippewyan on the north shore of Lake Athabasca. Pond ultimately united with the North-west Company; but Pangman, being joined by Messrs. Gregory, McLeod, and McKenzie, formed a separate organization. McKenzie had been for five years in Gregory's counting-house. He had set up for himself in Detroit; it was not long after he was admitted a partner in this second company and sent to the north-west. The rival companies soon came into conflict, and Mackenzie observes,—“After the murder of one of our partners and the laming of another, and the narrow escape of one of the clerks who received a bullet through his powderhorn in the execution of his duty, a union of the two companies was effected in July, 1787, when the number of shares was made 22. In 1788, the gross adventure for the year was £40,000. The X. Y. Company, which had several forts and for a time carried on an extensive trade in the north-west, united with the North-west Company in 1803.”

Governor Simcoe observes, in 1792, that “the fur trade has hitherto been the staple of Canada, and the protection of it, until the established government of Upper Canada, seems to have been the primary object of all the military arrangements and consequent settlements in the Upper Province.

“The actual state and general importance of this trade must be perfectly known to their Lordships by the very advantageous circumstance, in all respects, of the post of Quebec being the sole place from whence its produce can be exported to Great Britain. My observations on this head will therefore be confined to what may tend to the present protection or future increase of some of its branches. The trade to the north-west, which is carried on by a power-

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ful and enterprising company, is the most valuable branch of this commerce; although the route of this traffic be through the Province of Upper Canada, it is so far without the inhabited part of it that I cannot offer any report on the general state of this branch of the trade but what your lordships can better collect from that of Lower Canada."*

Further on he observes in reference to the Indian trade, that "The regulation of the Indian traders, when it should be seasonable, so far as to restrain those distant people by the dread of some legitimate authority, will be a work of difficulty, but of the most absolute necessity. The outrage and misconduct of many persons in that country loudly call for intervention; a closer knowledge and communication with those countries within the jurisdiction of Upper Canada but without its habitable parts, will be acquired by the alteration I have proposed."

Steps were taken to explore the north-west territories. A Mr. Holland, son of Major Holland, proposed to engage in the enterprise. Henry Dundas, the Colonial Secretary, was written to on the subject by Lieutenant-Governor Simcoe; and on the 2nd of May, 1793, Mr. Dundas replied:

"I am inclined to comply with Mr. Holland's proposal of exploring the interior parts of the north-west quarter of America. With respect to the time for undertaking the expedition, you, upon consideration with Mr. Holland, will be best enabled to decide, and upon my being informed of your determination, the necessary apparatus will be forwarded to you without delay."

The following letter was sent to Mr. Holland upon receipt of the letter of the Colonial Secretary:—

YORK, late Toronto, Sept. 26th, 1793.

SIR,—I have just received H. E.'s instructions to transmit to you an extract of a letter from the Right Hon. Henry Dundas to him, relative to your proposal of exploring the interior parts of the north-west quarter of the continent. H. E., who is going to Lake Huron and will set out immediately, will write to your father upon his return.

I am, etc., etc.,

E. B. LITTLEHALES.

John Holland, Esq.,
At Major Holland's,
Quebec.†

It does not appear that any further communication took place, nor have we discovered any account of Mr. Holland's explorations. It is presumed that his contemplated expedition never took place. But the fact that the correspondence was had with the Governor of Upper Canada, and not with the Governor-General, shows that it was taken for granted that the exploration was assumed to be within the limits of Upper Canada.

The Duke de Rochefoucauld, writing of Upper Canada, after having visited Governor Simcoe at Niagara, says:—"The extent of Upper Canada far exceeds that of Lower

* McKenzie's History of the Fur Trade; Harmon's Journal; Journal of Alex. Henry, jr., M.S.; Simcoe Papers, MSS.; Occurrences in the North-west, 1817; Pike's Journal, 1805; Umfreville's Hudson's Bay.

† Simcoe Papers, MSS.

Canada, as the western boundary being undefined, it comprises all the known and unknown countries extending as far as the Pacific or Great Sea, and is bounded also northwards by unknown countries.*

Alexander Henry, Jun., who was in the north-west country from 1799 to 1811, establishing the fur trade in connection with the North-West Company, gives the following as the population of that region in the year 1806. At this period scattered around the country was a population of about 80,000, which were distributed as follows:—

Departments.	Whites.			Indians.		
	Men.	Women.	Children.	Men.	Women.	Children.
Athabasca	208	48	84			
Athabasca River	37	12	15	55	38	66
English River	78	40	63	211	380	1100
Rat River	25	7	10	70	90	150
Fort des Prairies	136	59	103	4823	13632	45906
Fort Dauphin	45	22	18	19	17	31
Upper Red River	56	52	82	1170	1200	2500
Lower Red River	75	40	60	160	190	250
Lake Winipic	88	11	15	90	111	194
Lac la Pluie	46	10	10	103	141	195
Fond du Lac	128	29	50	449	784	1944
Nepigon	90	20	20	238	283	299
Kaministiquia, Mille Lac, and Du Chien	62	16	36	70	84	178
Pic	16	2	3	44	45	58
	1090	368	569	7502	16995	52871
Traders	520	37	31			
Total	1610	405	600	7502	16995	52871

Here it will be seen that Mr. Henry gives the white population connected with the North-West Company as 2,615, of whom 190 were upon the Upper Red River within the territories of the United States.¹ This number will not seem large when it is remembered that at some seasons of the year not less than three thousand traders were assembled at Fort William, which had become the chief entrepôt of the North-West fur trade.†

* Upper Canada MSS., 1783-1795.

¹ This number will not seem large when it is remembered that ten years later the Company had three hundred employed west of the Rocky Mountains, and that J. J. Astor sent out from Mackinac into the United States territories, in 1816, at least 1300 traders and voyageurs. Mr. Biddle says that from Mackinac "he fitted out two hundred and forty boats, each one containing from four to six hands" and two traders. "The two traders were only for one year, Congress having by law forbidden foreigners being licensed to trade with Indians. All his traders had hitherto been Canadians. Astor was compelled that year to send United States citizens, and sent out two hundred young clerks from city counting-houses of whom to make Indian traders. As they knew nothing of traffic, Astor had to send his old traders with them as hands." Wisconsin Hist. Col. vol. I, p. 51.

† Testimony of McDonell and Dawson in 1857.

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The Hudson's Bay Company, finding their trade at Churchill and York Factory cut off by the Canadian establishments north of the Saskatchewan, and their trade in the vicinity of James' Bay, damaged by the Canadian trading posts in the vicinity of Lake Nipegon, acted upon the advice of Hearne and established posts in various parts of the north-west territory. This they did not venture upon doing this for more than twenty years after the country ceased to be a possession of France. They left the shores of Hudson's Bay in 1774, and established a trading post on the east bank of Sturgeon Lake, in latitude $53^{\circ} 56'$ north, and longitude $102^{\circ} 15'$ west. They followed the North-West Company wherever they made an establishment, but in no instance did the Canada fur traders follow them. The North-West Company soon extended their posts beyond the Rocky Mountains, and upwards of three hundred Canadians were employed in carrying on a traffic over the country between Lower California and Russian America. The Hudson's Bay Company were far less enterprising than their rivals. Until the two Companies were amalgamated they paid their agents fixed salaries, while the agents of the North-West Company were paid a certain percentage of the profits realized from the fur trade. And Mr. Harmon observes there was a marked difference in the industry and enterprise of the agents of the two Companies.*

Although the Hudson's Bay Company followed the Canadian fur traders into the north-west, the traders of the two Companies remained on the most friendly terms. But with the accession of Lord Selkirk to the head of the Hudson's Bay Company's affairs a policy of violence and lawlessness was adopted.†

The period from 1811 to 1820 was one of conflict between the two Companies.

In 1814, a grant was made of a considerable portion of the country in the vicinity of Red River to Lord Selkirk, embracing a large tract of country which had long been a part of Canada under the French, and which had been ceded to Great Britain by the Treaty of Paris in 1763. There were French settlers who had continuously occupied the country since 1731, and the Canadian fur traders had, under British authority, carried on the trade with the Indians since 1765. The Hudson's Bay Company entered the valley of the Red River, for the first time, in 1805, and nine years later they professed to grant to the Earl of Selkirk that country as a part of the territory which they had acquired under the Charter from Charles II., 135 years before they had visited the country, and 93 years before it became a British possession.

Lord Selkirk, acting in the interests of the Hudson's Bay Company, at once set to work to expel the Canadian traders. Many of their trading posts and forts were taken, and some of them were destroyed. Their supplies were seized. Forceful possession was taken of their letters and correspondence. A band of their traders was attacked, in which the people of the Hudson's Bay Company were defeated, and upwards of twenty lives were sacrificed. Representations were made both to the British and Canadian Governments of the actual condition of affairs, in which the conduct of Lord Selkirk and his agents was denounced, and the claims of the Hudson's Bay Company to any exclusive right denied. Fort William was taken in 1816 by Captain D'Orsonnens, at the head of a number of disbanded soldiers, who ostensibly left Montreal for the north-west territory as

* McKenzie; Harmon; Henry, senr.

† Harmon.

settlers, but whose real design was to forcibly take possession of the property of the North-West Company. Captain D'Orsonnens left Montreal in May, 1816, with twenty-four men, eight of whom were formerly in the Regiment of Meuron, and sixteen in Hatteville's. At Kingston they were joined by Captain Matthey, Mr. Graffenreith and Lieutenant Fauche, with fifty or sixty men. Their united force numbered nearly ninety. They proceeded to Fort William, the property of the North-West Company, which they took on the 13th of August. On the 10th of September following, Captain D'Orsonnens set out from Fort William with thirty-five armed men to take possession of Fort Lac la Pluie, which was surrendered to him on the 3rd of October. In this way Lord Selkirk sought to prevent access being had to the north-west country from the settled parts of Canada.

On the 12th of February, 1817, Earl Bathurst addressed a dispatch to the Governor-General, in which he said :—"You will require, under similar penalties, the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and who were possessed of them previous to the recent disputes between the two Companies.

"You will also require the removal of any blockade, or impediment by which any party may have attempted to prevent, or interrupt, the free passage of traders, or others of His Majesty's subjects, or the natives of the country, with their merchandise, furs, provisions, and other effects throughout the lakes, rivers, roads, and every other usual route or communication heretofore used for the purpose of the fur trade in the interior of North America; and the full and free permission for all persons to pursue their usual and accustomed trade without hindrance or molestation."*

From this dispatch it will be seen that the British Government did not at that time recognize the extraordinary pretensions of the Hudson's Bay Company. Propositions were made by the North-west Company for a union of the two Companies, the Canadians receiving two-thirds and their rivals one-third of the profits, and that each should furnish in that proportion the means and capital; or to give the Hudson's Bay Company two-thirds of the trade over which they claimed that their chartered rights extended, upon condition that they refrained from encroaching upon the northern and western slopes of the continent. These offers for an arrangement were declined.

The Hudson's Bay Company, through Lord Selkirk, submitted a counter-proposition, in which they stated "that they would not interfere with the Athabaska posts if the Canadians would give up all trade in the countries through which any waters passed, flowing towards the Hudson's Bay;" that in the event of the North-west Company acceding to this stipulation, they would be permitted to retain some of their own posts along the line to the Athabaska country, if they would agree to leave the question of right to arbitration, which, if decided in favour of the Hudson's Bay Company, then the North-west Company should pay an adequate rent to their rivals as landlords. This counter-proposal the North-west Company declined to entertain.

In 1816 the Governor-General appointed a Mr. Coltman a Commissioner to enquire

* Trial of de Reinhard and McLellan; Trials at York, in 1818; Harmon's Journal; Narrative of Occurrences, 1817.

* Right Hon. Possessions; and

into and report upon the causes and extent of the disturbances in the North-West. Mr. Coltman made his report, in which he recommended a union of the interests of the various fur traders in that country. Both Companies had sustained heavy losses. The stock of the Hudson's Bay Company fell during the contest from 230 to 50 per cent. "In this state of things," says the R't Hon. Edward Ellice, "I think about 1819 or 1820, Lord Bathurst, then Secretary of State for the colonies, sent for me to consult me whether it was possible to do anything towards promoting a union between the Companies. I undertook that matter, not only at his request, but from obvious considerations of interest, having become under considerable engagements for one of the Companies; and after a very difficult negotiation, I succeeded in uniting the interests of the various parties, and inducing them to agree to carry on the trade after that agreement under the Charter of the Hudson's Bay Company. At the same time, I suggested to Lord Bathurst to propose a Bill to Parliament which should enable the Crown to grant a license of exclusive trade, (saving the rights of the Hudson's Bay Company over their territory) as well over the country to the east, as over that beyond the Rocky Mountains, and extending to the Pacific Ocean, so that any competition which was likely to be injurious to the peace of the country should be thereafter prevented. From these different arrangements sprung the present Hudson's Bay Company, which is more in fact a Canadian Company than an English Company in its origin. The Act then passed, under which the Company have since carried on the trade throughout the Indian territories beyond their boundaries, exclusively by virtue of the license."*

An Act was then passed by the Imperial Parliament for regulating the fur trade; and a Royal license, granting to the Company the privilege of trading with the Indians to the exclusion of other parties, was obtained.

An Act was passed in 1821, for regulating the fur trade and for establishing a Criminal and Civil jurisdiction within certain parts of North America. Under the authority of this Act the King granted to the Hudson's Bay Company, and to "certain associations of persons trading under the name of the North-West Company of Montreal," a Royal license granting the exclusive privilege of trading with the Indians in all such parts of North America to the northward of the lands and territories belonging to the United States of America "as shall not form part of any of our Provinces in North America," or of any lands or territories belonging to any foreign State. The license granted was for twenty-one years. West of the Rocky Mountains, it was not exclusive of citizens of the United States. This license did not apply, as will be seen from its terms, to the unsettled parts of Upper Canada. As a matter of fact many of their establishments were within the limits of the Province, but they were held simply because they were distant and difficult of access, and the Government of Canada did not take the trouble to assert what I think must be regarded as an undoubted right, to the country.

From what has been so far stated, it will be seen, that as early as 1656, the French visited the western part of Lake Superior, and traded with the Indians who resided some distance to the westward; that Du Lhut, with his *engagés*, explored the country westward

* Right Hon. Edward Ellice before Committee of the House of Commons on Hudson Bay Company's Possessions; answer to Q. 5784.

to the Mississippi, and northward to the head waters of Lake Nepigon; that Grosseliers went westward by the way of Pigeon River, to the Red River district, as early as 1666, and from thence explored the Nelson River to its mouth; that in the year 1717 Lieutenant La Nouë built a fort in the vicinity of Rainy Lake; that in 1728-32 Verendrye and his party erected forts upon Lake of the Woods, Lake Winnipeg and the River Assiniboine, that they continued to explore the country and to establish new trading posts until 1750; that after the death of the elder Verendrye, Captain Le Gardeur de Saint Pierre, and subsequently Captain La Corne, occupied the country as explorers until 1757, and that it was occupied by numerous bands of French traders and wood-runners at the time it came into the possession of the English; that in 1765, English traders from Albany and Montreal entered the Red River country; that one of them, Thomas Curry, accompanied by guides and interpreters, in 1766, went as far as Fort Bourbon, and the Saskatchewan; that before 1771, they had established a settlement within the Athapascov country; that a few years later they were followed to this district by the Hudson's Bay Company who did not enter the Red River district for three-quarters of a century after the French had been in possession of the north-west country. We have seen that from 1811 to 1820 the Hudson's Bay Company claimed the north-west country as a part of their grant; that during the nine years of hostilities between themselves and the Canadian traders, their pretensions were energetically resisted. Then came a union of the rival Companies, and the grant of an exclusive license from the Crown to trade with the Indians in the country beyond the limits of Upper Canada, since which no steps have been taken to determine where those limits are. We shall endeavour to show that the Hudson's Bay Company had no valid claim to the country; that it was not covered by their charter, and that if it had been, it could not have been held upon any principle of public law, against the explorations and settlement by the subjects of another State. Lord Selkirk and his friends, with a view of giving colour to the violent and unjust usurpations of himself and the Company, sought to leave the impression that the French half-breeds who resided in the north-west—the descendants of the wood-runners and traders who had accompanied Verendrye and his successors into that country,—were only known there since the establishment of the North-West Company; but the fact is that when the traders first penetrated into that country, after the conquest of Canada, they found it overrun with persons of this description, “some of whom were then the chief leaders of the different tribes of Indians in the plains, and inherited the names of their fathers, who had been the principal French commandants and traders of the district.

“A gentleman who was formerly engaged in the Indian trade, and who was lately in London, informed the author that when he first visited the Red River, in the year 1784, he was stopped near the forks by some of these half-breeds, or Brulée Chiefs, who told him that he could only trade in that country by their permission; and, as the price of such permission, they exacted from him goods to the value of above £400. This gentleman found, at the Upper Red River, Mr. Grant, the father of the half-breed Grant mentioned in the narrative, who had paid a similar tribute for permission to trade.”*

Upon what ground can a valid claim to that country be set up in favour of the

* Occurrences in North America, 1817, p. 150.

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"Governor and Company of Adventurers of England trading into Hudson's Bay?" To say that the Company's charter is valid, is beside the question. The charter, in one respect, must be regarded as a commission to make discoveries, and to take possession of unknown regions on behalf of the English Crown. A few English navigators had before visited the Bay, but it can be shown that, until the charter was applied for, the Crown set up no claim to Hudson's Bay and the adjacent country. But if we suppose the contrary were true—that the British Government had, at the time the charter was granted, an undoubted right to the whole coast,—how could that give to the King the right to convey lands a thousand miles away from its shores which had already been claimed by the King of France, had been visited by some of his subjects for the purpose of trafficking with the Indians, and over which he exercised jurisdiction for nearly a century before it was ever visited by those who professed to hold it from the King of England? The grant of the territories named in the Charter of the Hudson's Bay Company was not a grant of lands in the actual possession of the Crown. The King of France claimed the shores of Hudson's Bay as a part of Canada. The Treaty of St. Germain-en-Laye makes no reservation of any lands north of Canada as the possession of England. The Charter of the Hudson's Bay Company was a prospective conveyance of a country to be acquired by the discoveries and settlements to be made by those to whom the conveyance was made. The Crown had it not. The King wished to extend his dominions; his subjects wished to possess the country. He granted to them right of property, so far as it was in his power to do so, in order that they might acquire for him the rights of sovereignty, according to the recognised principals of Public Law. The Sovereigns of England and of France granted many charters in North America, conveying immense tracts of country—some of them stretching across the continent from sea to sea, between certain parallels of latitude, yet they never were regarded as furnishing conclusive evidence of sovereignty.¹ Differences arose between England and France, and also between England and Holland, as to the limits of their respective possessions in North America, but in no instance did any one Government accept a charter granted by another to its own subjects as proof of its superior claim to the territory in dispute. When the French Government referred to the charter granted in 1628 to the Company settled in New France, and asserted that all the Bay of the North was comprehended in the grant, the Hudson's Bay Company replied that when they grant places unknown to them, "nobody is so weak as to think that anything passeth by those grants but what the King is rightfully and truly possessed of or entitled to, for *nemo dat quod non habet* is a maxim understood of all; but the French would have no bounds to Canada to the northward, nor, indeed, to any parts of their dominions in the world, if they could."

It is true that the charter granted by Charles II. to the "Governor and Company of Adventurers of England trading into Hudson's Bay," does not profess to grant territory in the possession of the subjects of another Christian Prince, but what is contended is, that he did claim to grant an extensive region not in the possession of himself or his subjects, and that by such a grant he could not bar the subjects of France from acquiring

¹ "A charter without possession can never be allowed by the Law of Nations to change the property of the soil."—Lords of Trade to the King, 8th Sept., 1721.

the territory which he professed to convey, any more than the King of France could bar the English by the charter of 1628. Each might make, according to the laws of his own kingdom, a conveyance of what he possessed; but neither could, by such a conveyance shut the other out of an unexplored and unoccupied region; and this is precisely what the Hudson's Bay Company claim Charles II. did in granting them a charter. Upon what principle of right, or of Public Law, can it be maintained that the Sovereign of a European Kingdom could convey all the territory in North America, not in the possession of any other Christian Prince or his subjects? What authority or power did Charles II. possess that could make a charter of this kind from him of any more value than the charter of the French King to his subjects? Why would not the maxim *nemo dat quod non habet* apply as strongly to the grant of 1670 as to that of 1628?

Such grants add nothing to the title of the Government, and were useful only in so far as they served to promote early discovery and settlement. The respective rights of the two Governments were, apart from the fortunes of war, defensible only upon grounds of prior discovery, followed by occupation in some way or by some other act which, according to the usages of nations and the moral sense of mankind, creates a superior claim to the sovereignty of the country in dispute. Can it for a moment be supposed that the King of England could lock up the country within the western borders of Canada by a charter granted to some of his subjects who, for a hundred and thirty-five years, never visited the country?¹

Whoever has taken the trouble to look into the policy of granting charters like this, must be aware that they were not usually given because the country belonged to the Government or sovereign that made the grant, but, as has already been said, that it might become theirs or his by the subsequent diligence of those to whom the grant was made. In the history of English colonization, there are many instances of prospective grants of this kind; but their validity as against any foreign prince or his subjects, must depend on this—who first performed those acts which by the law of nations are held to constitute a title to the sovereignty of the country? The charter must be put out of view. Its contents signify nothing in the discussion. It is simply an act of one of the parties which, in itself, is not even an element which goes to make up the rights of sovereignty.*

1 The History of the Virginia Charters will show how these grants were regarded by the Crown:—

The first charter of Virginia was granted on the 10th April, 1606. It extended along the sea coast from 34° N. L. to 40° N. L., but only fifty miles inland; the second charter was executed on the 23d May, 1609. It conveyed the land from "Point Comfort all along the coast South for 200 miles; and all the space and circuit of land lying from the sea coast of the precinct aforesaid, up into the land throughout, from sea to sea, West and North-west; and also all the islands lying within 100 miles along the coast of both seas from the precinct aforesaid." The third charter was dated 12th March, 1612, and annexed to Virginia all the islands within 300 leagues of the coast. Previous to granting these charters, Virginia was understood to extend from 34° N. L. to 45° N. L., and from the Atlantic indefinitely Westward. The three Royal charters were vacated by a writ, *quo warranto*, in 1626. Without making any alteration in its original boundaries, a commission was issued for its government by officers under the King. Keith's Virginia, Pt. I, pp. 53, 141. Subsequently, they were made to Colvert and Penn within the chartered limits of Virginia. The history of all these charters, granted prior to actual possession, shows very plainly how they were regarded. They were so much acknowledged unless the Crown acquired a title through those to whom the grant was made.

In the cases of the two patents by Henry VII. to John Cabot; the patent by Elizabeth to Sir Humphrey Gilbert; and that to the London Company by James I. Biddle's Memoir of Sebastian Cabot, p. 75. Hakluyt, vol. III, pp. 30, 31, 174-176. Hazard's Hist. Col., Vol. I, pp. 51-58. Keith's Virginia, Pt. I, p. 141.

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The usual policy in granting charters of this kind was to convey the widest possible extent of territory ; not because it was an act which limited in any way the right of acquisition by another sovereign ; not because another could be estopped from conveying in like manner a title equally valid to his subjects ; but for the purpose of extending his dominions by stimulating those to whom the grant was made, to explore the country, and to take possession of it, by the sovereign's authority, and on his behalf. The French King did, as we have seen, exercise his prerogative of making similar grants to his people. While the English adventurers rested upon the shores of Hudson's Bay, and slept upon their prospective rights, the French boldly pressed forward and took possession of the interior. France had possession of the country to the Rocky Mountains, and north to the Saskatchewan, at the time of the Peace of Aix-la-Chapelle, but no complaint was made by the English that she had encroached upon British territory. The whole of the north-west, was, to the Hudson's Bay Company, and to the British people and Government, an unknown land.

The maps of that portion of America published by British geographers were simply copied from the maps of the French. There had been no act of any kind, formal or informal, of any Englishman, which gave, or could give, to the Crown of England any grounds upon which it could found a claim to the sovereignty of the north-west, prior to its cession by the Treaty of Paris. The Company for 135 years rested upon the rights which a contested claim from the King of England to the exclusive possession of the Straits and Bay of Hudson, gave them. While they did so, another people against whom their charter could oppose no legal obstacle, occupied the interior.

It was accessible to them from another quarter, and the Company did not enter the north-west part of Canada for eleven years after the Treaty of Paris, nor the Red River district for forty years after the transfer took place.

It has now been shown that the country claimed *and actually possessed* by France, extended from the Alleghany Mountains and the Atlantic Ocean upon the east, to the borders of Mexico and the Rocky Mountains upon the west, and from the Gulf of Mexico on the south to the northern watershed of the Saskatchewan upon the north ; that so much of this territory as lay north of the Ohio and Missouri Rivers, except the Illinois country, was designated by the French as Nouvelle France, or Canada ; that, in 1763, France ceded this country to England, retaining that portion of Canada which was west of the Mississippi River ; that the boundaries of the Canada that England obtained from France extended southward to the New England Colonies, New York and the Ohio River, and westward to the Mississippi ; along the Mississippi to its source, then due west in the latitude of Lake Itasca to the Rocky Mountains and northward beyond the Saskatchewan ; that, in 1763, a small Province was formed upon the St. Lawrence by Royal Proclamation, called the Province of Quebec ; and that the various French Colonies and settlements west of this Province, were governed by the Commandants of the garrisons sent amongst them ; that, in 1774, the Quebec Act extended the boundaries of the Province of Quebec southward to the Ohio, and westward to the Mississippi ; that in many of those settlements which, before the passing of the Quebec Act, were without any civil government, Lieutenant-Governors were appointed, and civil government superseded the military government which before had prevailed. The debates in Parliament upon the Bill show that both its supporters and opponents understood the Bill, if carried, would

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extend the boundaries to the Mississippi River. That the Act was so understood by the colonies is shown by the manifesto of Congress to the English people; that it was so understood by the Law Officers of the Crown is obvious from the Governor's Commission; and that it was understood by Lord Shelburne and other leading noblemen, in opposition to the Government, is made apparent by the debate upon his motion for the repeal of the Act in 1775. It has been shown that when Upper Canada was created by an Order in Council, in August, 1791, England held the greater portion of Quebec south of the boundary fixed by the Treaty of 1783; that she did not regard the line then established as a subsisting boundary; and that when Upper Canada was formed she intended to include, and did in fact include, the country south of this boundary as a part of the Province which was held as such, until the line of 1783 was re-established by the Treaty of 1794; that Upper Canada was not intended to embrace simply the western part of Quebec *but the whole of the country to its utmost extent which had been before known as Canada*; that the Quebec Act carefully distinguishes between the Province of Canada and the Province of Quebec, and that there is no reason for holding that they were confounded by the Order in Council and the Royal Proclamation of 1791; and that the large population engaged in the fur trade of the north-west, the immense territory over which they ranged, and the acts of violence which had been committed, pointed to the necessity of embracing all Western Canada in the Province of Upper Canada, and that this was accordingly done.

It now remains to point out the proper location of the northern boundary towards Hudson's Bay, under the Treaty of Utrecht.

NORTHERN BOUNDARY OF ONTARIO.

The sovereignty of the territory upon the shore of Hudson's Bay was a matter in dispute between the Crowns of Great Britain and France from the year 1670 until the signing of the Treaty of Utrecht, when the French claims to the possession of Hudson's Bay and the adjoining country were definitely yielded to England.

The location of the boundary line between the Province of Ontario and the Hudson's Bay country can be determined only by the proper construction of the 10th Article of the Treaty of Utrecht, and of the Order in Council of August, 1791. They must be interpreted in the light of contemporaneous events, and in accordance with the recognised principles of Public Law.

1517—CABOT'S VOYAGE.

Hudson's Bay and Strait were discovered by Sebastian Cabot, who sailed thither under a commission from Henry VIII. of England, in the year 1517. He then entered the bay, which, ninety-three years later, took its name from Henry Hudson.* The French Commissioners appointed in 1750 to settle, in conjunction with Commissioners

* Travayles in the East and West Indies, Eden and Willis, fol. 267. Bacon's History Henry VII. Hakluyt, vol. III, pp 25, 26, 27. Chalmers' Political Annals, pp. 7, 8. Hazard's Hist. Col., vol. I, p. 9. Bidle's Memoir, pp. 75, 85, 86. Anderson's History of Connecticut.

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appointed by England, the possessions claimed by the two Crowns in America, alleged that "Cabot's voyage was of a private character, and could not, therefore, confer any public or political advantage upon England." The English Commissioners admit the soundness of the principle laid down by the French, but deny the accuracy of their statement in Cabot's case. "It would," said the English Commissioners, "be a circumstance favourable to the interpretation the French Commissioners put upon the voyage, if Henry VII. had not in his letters patent inserted words by which he reserved to himself and to his Crown, dominion and royalty in all the lands which shall be discovered or settled by Cabot." This discussion relates to the voyages of John Cabot and the earlier voyages of Sebastian Cabot, which ranged between 1496 and 1504, during the reign of Henry VII.

FROBISHER'S ALLEGED VOYAGES—1576, 1577, 1578.

It is stated in a paper prepared by the Hudson's Bay Company for the purpose of establishing the right of the Crown of Great Britain to this Bay at the time they obtained their charter, "that Sir Martin Frobisher, in Queen Elizabeth's time, made three voyages to the said bay, in 1576, 1577, and 1578, and gave English names to several places there; and that Captain Davis made also three voyages, and named other places in the bay." This statement is inaccurate. In the year 1576, Frobisher, who had long desired to start on a voyage for the discovery of a north-west passage to the east, regarding it, as he himself declared, as, "the only thing of the world that was yet left undone by which a notable minde might be made famous and fortunate," was gratified through the favour of the Earl of Warwick. He sailed from the Thames in command of three small vessels of ten, twenty, and twenty-five tons burden, respectively. The smallest of the three sank in a storm. The mariners on the second, fearing a similar fate, returned. Frobisher sailed in the remaining sloop to the entrance of Hudson's Bay. He landed on an island near the strait which bears his name, and took formal possession of it for Elizabeth, and returned to England. A stone was brought back from this island which, it was said, contained gold. A fleet was at once fitted out. Elizabeth who had done nothing more than express her good wishes at the first voyage, sent a large ship. This fleet, which went in search for the northern Eldorado, did not advance westward as far as Frobisher had done in his little barque of twenty-five tons burden the year before. In his third voyage, a fleet of fifteen sail left upon the adventure, with one hundred persons as colonists. He reached the strait now called Hudson's. Frobisher thought that this strait led to the Pacific. As he was not seeking for geographical knowledge, but for the rich mines which were supposed to have been discovered upon his first voyage, he did not feel himself at liberty to sail further westward. He and his companions voyaged northward through dense fogs, amidst mountains of ice, again and again escaping destruction, they scarcely knew how; so that, by the time they had reached the point of destination, those who were to colonize the islands between Hudson's Bay and Davis Straits, were most willing to return to England. The sailors were ready to mutiny. A cargo of black ore was carried back. The avaricious were disappointed, and science gained nothing by the adventure. Frobisher, perhaps, would have found his way into the bay, had he not felt that his duty as a mercantile agent forbade him sailing thither. He did not do so, and I fail to

discover in what way these voyages of Frobisher can establish a title to territories which stretched along a shore at least a thousand miles away.

The discoveries of Davis were still more distant.*

FREDERICK ANSCHILD—EXPLORATION BY DENMARK.

Hudson's Bay was explored by Frederick Anschild, a Danish navigator, who had set out from Norway or Yclandia some years before, with a design, to find out a passage to Japan. He entered the strait which twenty or thirty years later was called Hudson's Strait. He wintered in Hudson's Bay and returned the next spring to Denmark.†

1608-1610—CAPTAIN HUDSON'S VOYAGES.

Captain Hudson sailed through Hudson's Strait into Hudson's Bay, in the year 1610. He was at the time in search of a north-west passage to China and the east of Asia. He is often credited as being the discoverer; and the English claim to the possession of the bay and the surrounding country has been, in part, based upon his supposed discovery. Baron La Hontan says,‡ that Hudson, when he made the discovery, was in command of a Dutch ship, and when he left the Bay he returned to Holland. But La Hontan is mistaken. Hudson made four voyages in search of a highway to the east, which La Hontan has carelessly confused. The first was in 1607, under the direction of a company of London merchants. He coasted the eastern shore of Greenland, and visited the Island of Spitzbergen. He reached a latitude of eighty-two degrees, but was compelled, on account of the ice, to return. In 1608 he sailed a second time, and attempted to reach the East Indies by passing between Spitzbergen and Nova Zembla, but was not successful. The ardour of the London merchants was dampened by these failures, and they declined to incur further expense. Hudson repaired to Holland, where he was engaged by the Dutch East India Company. Through the influence of Moucheron, a small vessel, the *Crescent*, was placed under his command. She had a mixed crew of Dutch and English; and in April, 1609, she put to sea in search of a north-west passage. In this, his third voyage, he sailed along the coast of Nova Scotia, southward to Sandy Hook; he passed through the Narrows, discovered and explored the Hudson River, and gave to Holland a claim upon the country, which for more than half a century was known as New Netherland. He then sailed from America to Dartmouth. He had sent a brilliant account of his discoveries to the Dutch East India Company. It was some time before his report reached Holland. When his employers heard of his arrival at Dartmouth, they instructed him to return at once to Holland; but he was forbidden by the English authorities to quit his native country. The Government was jealous of the advantages which the Dutch had gained by Hudson's discoveries, and the *Crescent* was detained for eight months in Dartmouth harbour. The *Crescent* reached Amsterdam in the summer of 1610, but the

* Hackluyt, Vol. III, pp. 52-129; Pinkerton's Collection, Vol. XII, for an account of Frobisher's 1st, 2nd, and 3rd voyages; *Récueil de Voyages du Nord*, Vol. V; *Relation de la Baie du Hudson*, par M. Jérémie.

† La Hontan's *Memoirs*.

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Dutch East India Company were not disposed to continue explorations which did not promise the discovery of the long-looked-for north-west passage, and which were not within the limits of their charter.

In 1610 Hudson made his fourth voyage under the direction of a company of English merchants. He sailed from the Thames in "The Discovery." He passed Iceland, doubled the southern Cape of Greenland, and entered the straits which bear his name. He supposed when he came upon the gulf that he had gained his object. He explored the coast and found himself upon an inland sea. He still hoped to discover a western strait, and the better to accomplish this object, he resolved to winter in the bay. For this no adequate preparation had been made. The suffering and privation upon the frozen coast were great. When spring opened the ship's supplies were exhausted. He was compelled to make ready for a return. The ship became encompassed with vast fields of ice. Many of the crew, who were before greatly dissatisfied on account of the hardships of the winter, now openly mutinied. Hudson, with his only son and seven of the crew, four of whom were sick at the time, were placed in an open boat. Philip Staffe, the ship's carpenter, asked leave to share the fate of his captain, and the request was granted to him. Just when the ship made its way from the ice, the boat with the ten men who had been placed in it was sent adrift, and was never after heard of.

Such, in brief, were the voyages of Captain Hudson, the first two and the last of which were made on behalf of English merchants. They had no official character, nor could any public right be based upon his discoveries.¹

1612, 1631—SIR THOMAS BUTTON, CAPTAINS BAFFIN, BYLOT, FOX, AND JAMES.

It is recorded that Sir Thomas Button entered the Bay in 1612, erected a cross at the mouth of Nelson River, and took possession of the country on behalf of the Crown of England; that Captains Baffin and Bylot, sailed thither in 1615; that Captain Fox, by command of Charles I., made a voyage to Hudson's Bay in 1631, and finding the cross erected by Sir Thomas Button, with the inscription nearly worn out, renewed the inscription, and again took formal possession; and that Captain James explored the southern part of the bay the same year, and gave to it his name.*

For more than thirty years after the voyage of Captain Fox, there is no account of the bay having been visited by any English ship, nor does it seem that the English Government attached any importance to its possession.† The ships that entered Hudson's Bay were usually in search of a north-west passage to China and the East Indies.

In 1629, Quebec was taken by Admiral Kirk, and continued in possession of the English until the signing of the Treaty of St. Germain-en-Laye, March 29th, 1632.

1 On voit, sur quelques Cartes, qu'en 1619 Jean Munck, Danois passa le Détroit de Hudson and alla aborder à l'Ouest sur la Côte opposée, qu'il y mouilla à l'entrée d'une rivière par les 59 degrés de Latitude, à laquelle il donna le nom de Rivière Danoise, le même qui s'appelle aujourd'hui la Rivière de Churchhill. Mais suivant les Relations qui parlent du voyage de Jean Munck, il paroît qu'il faut chercher dans le Détroit de Davis, la Rivière où il mouilla la nuit que ce Maria n'a pas entré dans le Détroit de Hudson. *Bellin's Remarques sur la Carte de L'Amérique Septentrionale*, p. 7.

* N. Y. Hist. Doc. vol. I, pp. 61, 146, 188. Brodhead's History of New York, vol. I, pp. 24, 35, 42.

† For an account of Button's voyage, see Fox on a "North-west Passage," 4to, London, 1635.

1632—TREATY OF ST. GERMAIN-EN-LAYE.

By Article Three, it was agreed that the King of Great Britain should give up all places in New France, Acadia and Canada; that Fort Royal, the Fort of Quebec and the Island of Cape Breton should be restored; and, as France had in her charters in 1626 included in Canada the whole country about Hudson's Bay, it would seem that England in 1632 made no claim to that country.

1666—DES GROSSELLIERS' PROCEEDINGS.

It has already been stated that Des Grosselliers accompanied the Indians from Lake Winnipeg to Hudson's Bay in the year 1666.* He and his companion Radisson returned to Quebec and sought to secure privileges, first from the Government of Canada and then from the French King himself, and having failed in obtaining what they desired they went to England upon the advice of Lord Preston, where they had better success; they succeeded in inducing several noblemen and merchants to undertake a trade with the Indians in the vicinity of Hudson's Bay.

GILHAM'S VOYAGE.

In 1667, after the visit of Radisson and Des Grosselliers to London, Zachary Gilham, a New Englander, in the interests of some London merchants, sailed through Hudson's Straits to the southern end of the bay and erected a fort at the mouth of Rupert's River. This was the first fort built upon the shore of the bay.

1669—CAPT. NEWLAND'S VISIT.

In the year 1669 another voyage was undertaken by the same adventurers; and one Captain Newland was sent by them to the mouth of Nelson River. (During a voyage Captain Gilham was frozen up in Rupert's River from the 9th of December, 1668, until April 1669. From this it would appear that a voyage was also made in 1668.)

1670—CHARTER TO HUDSON'S BAY COMPANY.

In 1670 Charles II. granted a charter to those who had, during the two or three previous years, been engaged in the Hudson's Bay fur trade, by which he professed to convey an exclusive property to all the lands and territories within the Straits and Bay of Hudson which were not already actually possessed by or granted to any of the King's own subjects, or possessed by the subjects of any other Christian Prince or State. The charter also granted to the Company an exclusive right of trade. This may be regarded as the beginning of the British claim to the possession of Hudson's Bay.

The charter to the Hudson's Bay Company asserted, or rather implied, a conditional right in the King, based upon the then recent acts of his subjects; and related back to the voyage of Gilham in 1667, and no further.

* Harris' Voyages, vol. II, pp. 245-286. According to De Fonte, a Boston ship sailed to Hudson's Bay in 1640; but this does not seem to be well authenticated.

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COMPANY OF NEW FRANCE.

A similar charter had been granted to the Company of New France in 1626 by Louis XIII., which included the whole country about Hudson's Bay.

As the Indians in the vicinity of Hudson's Bay came to Montreal, Cataraqui and Tadoussac to trade, the Company of New France had no necessity to erect forts and trading posts, so long as no trading vessels entered Hudson's Bay. The authorities in Canada favoured the exclusive use of the Saint Lawrence as a channel for the trade of the Province.

1656—BOURDON'S EXPLORATION.

In 1656, Jean Bourdon, the Attorney-General, explored the entire coast of Labrador and entered Hudson's Bay. He made his voyage in a barque of thirty tons, and took possession of the coasts in the name of the French King, and while there it is said made treaties of alliance with the Indians. This voyage is confirmed "by an extract of the Ancient Register of the Sovereign Council of New France."*

[Mr. Ramsay says, in his report on the subject of the disputed boundaries of Ontario, p. 24 :—"In the memoir of the French right to the Iroquois country and Hudson's Bay, of the 8th of November, 1686, it is said that in 1656 Jean Bourdon ran along the coast of Labrador, with a vessel of 30 tons, entered and took possession of the North Bay, and that this is proved by an extract of the Ancient Register of the Council of New France, of the 26th of August of the said year, (1656). * * * He sailed from Quebec on the 2nd May, 1657, and returned on the 11th of August the same year, at ten o'clock at night. (Journal des Jesuites, pp. 209, 218.) But we are not left in any doubt as to the extent of Bourdon's voyage. On reference to the 'Relations des Jesuites,' Vol. III. 1658-9, we find this entry: '*Le 11 (August) parut la barque de Monsieur Bourbon, lequel estant descendre sur le grand fleuve du côté du Nord voyager jusques au 55 degré, ou il rencontra un grand banc de glace qui le fit remonter aient perdu deux Hurons qu'il avoit pris pour guides. Les Esquimaux sauvages du Nord les massacrèrent et blessèrent un François de trois coups de fleches et d'un coup de couteau.*'"

The words of the memoir will hardly warrant the construction put upon them by Mr. Ramsay. The words of M. Calliers are as follows :—"As regards Hudson's Bay, the French settled there in 1656, by virtue of an order of the Sovereign Council of Quebec, authorizing Sieur Bourdon, its Attorney-General, to make the discovery thereof, who went to the north of the said bay and took possession thereof, in His Majesty's name." The date of the order is not here given, but the year of the voyage is given. In Denonville's memoir the words are :—"In 1656, Jean Bourdon explored the entire Labrador territory, entered the Bay du Nord, and took possession thereof, according to an extract from the Ancient Register of the Council of New France, of the 26th of August of the same year." Now, this "extract" is an entirely different matter from the Order authorizing the voyage to be undertaken. It is the registration of a voyage already made. No one in his senses

* Charlevoix, Vol. III, pp. 230, 231. M. Calliers to M. de Seignelay, N. Y. Hist. Col. Vol. IX, p. 268; See also Denonville's Memoir, 8th Nov. 1686, N. Y. Hist. Col. Vol. IX, pp. 303, 305. Journal des Jesuites, pp. 209, 218.

would at that time have written that a voyage had been made to Hudson's Bay from Quebec and back after the 26th of August, during the same year. It is said of M. de Tas, who was appointed in 1691 to take charge of an expedition to Hudson's Bay, that he did not arrive in Canada until the first of July, *when the season was too far advanced to go to Hudson's Bay*. And the following year D'Iberville was to have accompanied a fleet of trading vessels to the bay, *but not arriving with his ship in Quebec until the 18th of August, it was then too late to proceed*. How then can it be supposed that the record of the 26th of August, 1656, refers to an Order, authorizing a public voyage, and that subsequently M. Denonville asserts the voyage was made that year? M. Denonville is spoken of as a nobleman of high character; he was not likely then to make a deliberate mis-statement. But further, the French, at the time the memoir was written, had made several voyages from Quebec to the bay; and the Marquis de Denonville knew what was possible and what was not possible.

It was not the usual practice for the Sovereign Council to order voyages of discovery. These were usually undertaken by the authority of the King, the Governor, or the Intendant. The Sovereign Council, like the Parliament of Paris, recorded the voyages which the King or Governor had authorized, and it is to such a registry that M. Denonville refers in his memoir. That Jean Bourdon may have undertaken a voyage to the Bay the following year, and that he may have failed for the reason stated in the *Relation des Jesuites* for 1658-9, is not at all improbable; but it is very improbable that the Governor, quoting from the Register of the Council the day of the registration made twenty years before, could have been mistaken as to the fact. It is not the order authorizing the voyage, but the entry of the *pris de possession* recording the fact that such a voyage has taken place, that is of consequence; and it is to this that M. Denonville, in his memoir, refers. But whether such a voyage ever took place or not, cannot affect the rights of Ontario at the present time. Mr. Ramsay admits that it was attempted, and the admission made in this and in another case, apart from the journey of Couture, which is not questioned, prove beyond dispute, that these enterprises were not caused by rival attempts of the English, as they preceded the voyages of Gilham and the Hudson's Bay Company. M. Bellin, who, as Engineer of the Marine, and of the Dépôt of Cartes, Plans, and Journals, had every opportunity of being well informed, says of the voyage of M. Bourdon:—"Le premier qui alla dans ces mers, [Baie du Nord] avec des vues d'établissement fut le Sieur Bourdon habitant de la Nouvelle France. Le Gouverneur-Général l'y envoya en 1656, pour en pendre possession au nom du Roi Très Chrétien."—*Bellin's Remarques*, p. 8.]

1661—FATHER DABLON'S VISIT.

"In the year 1661, Dablon, a Jesuit, and Sieur de Valliere were ordered by Sieur d'Argenson, who was at the time Governor of Canada, to proceed to the country about Hudson's Bay; they went thither accordingly, and the Indians who then came back with them to Quebec, declared that they had never seen any European there before. The Indians, who were anxious to continue their trade with the French in Canada, sent a party with Dablon to Quebec. They invited the Canadians to establish trading posts upon the Bay, and to send missionaries among them. Upon their way back, they seem

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to have repented of having invited the missionaries amongst them, and refused to conduct them to the Bay.*

1663.—SIEUR DE LA COUTURE.

In 1663 the Indians from about Hudson's Bay returned to Quebec in further quest of traders, and D'Avangour sent thither *Sieur de la Couture* with five men who proceeded overland to the said Bay, possession whereof he took in the King's name; he noted the latitude, planted a cross, and deposited at the foot of a large tree His Majesty's Arms engraved on copper, and laid between two sheets of lead, the whole being covered with some bark of trees.†

1663—DUQUET AND L'ANGLAIS.

"In the same year, 1663, *Sieur Duquet*, King's Attorney to the Provoté of Quebec and *Jean L'Anglais*, a Canadian colonist, went thither again by order of said *Sieur D'Argenson*,¹ and renewed the act of taking possession by *setting up His Majesty's arms there a second time*. This is proved by the arrêt of the said Sovereign Council of Quebec, and by the orders in writing of said *Sieurs D'Argenson*² and *D'Avangour*."³

1666 OR 1667—RADISSON AND DES GROSSELLIERS.

In 1666 or 1667 *Radisson* and *Des Grosselliers* traversed the country from Quebec to the Red River country, and thence to Hudson's Bay. They returned to Quebec and pro-

N. Y. Hist. Col. Vol. IX, pp. 268 and 304. [An attempt has been made, on the strength of certain passages in the *Relations des Jésuites*, to throw doubt on the authenticity of certain of the occurrences mentioned in the Memoirs of M. de Callières and the Marquis de Denonville. It is not at all likely that either of these—the one being Governor of Montreal, and the other Governor-General of New France—having access to the official documents, and writing within a short time of the date of the events narrated, could by possibility be mistaken. Their statements are official, and communicated as such to the Government of France, and duly filed with other despatches from Canada in the archives of the proper department in Paris. How could a Memoir be found in those archives carefully filed away as a document from a Colonial Governor to the Prime Minister of France, if it was not genuine? A very strong case must indeed be made to make its genuineness doubtful; and this certainly is not done by the passages cited from the *Relations*. When we have a copy of a document in the hands of the French Government, and purporting to come from a Canadian Governor, and relating circumstantially a succession of events which are represented as having occurred during the preceding twenty-five years, under the authority of his predecessors, and a record of which he says was then in existence, it would indeed be a new method of establishing the credibility of history to set such a memoir aside upon the testimony of a statement in a private journal. It is well to bear in mind that the persons who, it is said in the Memoirs, made these journeys to Hudson's Bay, lived at the times named in Canada, and that no doubts have been attempted to be cast upon the other events narrated in them. And as to *Dablon's* journey referred to in the Memoirs, it does not, as a matter of argument, follow that it is the same that is referred to in the *Relations*, or even that the *Dablon* of the one is the *Dablon* of the other. It must also be remembered that gross mistakes have been made by some of the Lower Canada editors and transcribers of these *Relations* owing to their illegible character. (See as to this, the work of Mr. Shea and the Letters of Judge Law; also Parkman's statement as to the silence of the *Relations* in reference to the discoveries of La Salle and other laymen, and of the missionaries of other orders.)]

† N. Y. Hist. Col. pp. 268, 304.

1. This order must have been given earlier, though it may not have been acted on.

2. Order of D'Argenson renewed by D'Avangour.

3. M. de Callières to M. de Seignelay, N. Y. Hist. Col. vol. IX, pp. 265-268. Charlevoix, vol. III, book 10.

posed to the merchants there to conduct trading vessels to Hudson's Bay. They had discovered that the fur district to the north of Lake Superior lay in the vicinity of Hudson's Bay; that the furs could be taken to Europe from the coasts of that bay with much less expense than from Lake Nipigon by the way of the St. Lawrence; and that if the northern furs were shipped in that direction the adventurous trader might escape the meddlesome oversight of the officials. Their proposal was rejected. They then went to Paris and explained the matter to the King's Ministers, but with no better success. Lord Preston, the English Ambassador, persuaded them to go to London and to lay their scheme before certain noblemen and merchants there, which they did, and their project was favourably entertained.* The noblemen and merchants who entertained the project of the two Canadians, did not entrust the prosecution of the enterprise to them, but to Zachary Gilham, a New Englander, who had been long engaged in the Newfoundland trade. Gilham and the two Canadians sailed thither in a small vessel named the *None-Such*. The voyage was successful. The representations of the two Canadians, that the fur trade north of Lake Superior could be advantageously carried on from Hudson's Bay, proved to be well founded.†

It is reasonable to suppose that Radisson and Des Grosselliers were not the first Frenchmen to make the overland journey to Hudson's Bay. We shall presently see that the Canadians were very familiar with the country from Lake Nipigon to Nelson's River; and it is highly probable, as stated by the Marquis De Denonville, that they were induced to go to Hudson's Bay, or were rather led thither, by the old *coureurs des bois*, with whom they had formerly carried on the fur trade.‡

1670.

In May, 1670, the persons who were engaged in fitting out these expeditions applied to the King, Charles II., for a charter conferring upon them the exclusive property and trade of the Straits and Bay of Hudson and its coasts. This charter professed to grant them in free and common soccage, "all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by, or granted to, any of our subjects or possessed by the subjects of any other Christian Prince or State."

In November, 1670, the Intendant, M. Talon, wrote to M. Colbert: "I learn by the return of the Algonquins, who will winter this year at Tadoussac, that two European vessels have been seen very near Hudson's Bay, where they wigwam (*cabanet*), as the Indians express it. After reflecting on all the nations that might have penetrated as far north as that, I can light only on the English, who, under the guidance of a man named Desgroselliers, formerly an inhabitant of Canada, might possibly have attempted that navigation, of itself not much known and not less dangerous. I intend despatching thither, overland, some man of resolution to invite the Kilistinons, who are in great numbers in the vicinity of that Bay, to come down to see us as the Ottawas do, in order that we may have the first pick of what the latter savages bring us, who, acting as pedlers between those nations and us, make us pay for a round-about of three or four hundred leagues. The proposal

* N. Y. Hist. Col. vol. IX. pp 303, 304, 305. Charlevoix, vol. III. book 10.

† Robson's Acc. unt.

‡ De Denonville's Memoir. N. Y. Hist. Col. vol. IX.

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made to me by Capt. Poulet, of Dieppe, ought to be mentioned here. This man, wise by long practice and experience, acquired from an early age, and become a skilful navigator, offers to undertake the discovery—if not yet accomplished—of the passage between the two seas, the southern and northern, either by David's Straits or by that of Megellan, which he thinks more certain. After having doubled the opposite coast of America, as far as California, he will take the western winds, and, favoured by these, re-enter by Hudson's Bay or David's Strait. I have given him a letter which he is to present to you, if he have not altered the plan, which would be to penetrate as far as China by one or other of these passages.*

1671.

In November, 1671, M. Talon wrote to the King as follows:—"Three months ago, I dispatched with Father Albanel, a Jesuit, Sieur de Saint Simon, a young Canadian gentleman recently honoured by His Majesty with that title. They were to penetrate as far as Hudson's Bay; draw up a memoir of all they will discover; drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter, in order to establish a factory, that might, when necessary, supply provisions to the vessels that will possibly hereafter discover by that channel, a communication between the two seas—the North and the South. Since their departure, I received letters from them three times. The last, brought from one hundred leagues from here, informs me that the Indians whom they met on the way, have assured them that two English vessels and three barques have wintered in the neighbourhood of that bay and made a vast collection of beavers there. If my letters in reply are safely delivered to the said Father, this establishment will be thoroughly examined, and His Majesty will have full information about it. As those countries have been long ago originally (*anciennement*) discovered by the French, I have commissioned the said Sieur de Saint Simon to take renewed possession in His Majesty's name, with orders to set up the escutcheon of France, with which he is entrusted, and to draw up his *procès-verbal* in the form I have furnished him.

"It is proposed to me to dispatch a barque of sixty tons hence to Hudson's Bay, whereby it is expected something will be discovered of the communication of the two seas. If the adventurers who form this design subject the King to no expense, I shall give them hopes of some mark of honour, if they succeed; besides indemnifying themselves from the fur trade which they will carry on with the Indians."†

1673.

In 1673, a Jesuit Missionary was sent overland from Canada to discover the country and the situation of the trading ports of the Hudson's Bay Company. Under the pretence of friendship, he carried with him letters to Des Grosselliers from his friends in Canada, which led the Governor of the Company to suspect that Des Grosselliers was corresponding with the French to the prejudice of the English interests in that section. Des Grosselliers and Radis-

* N. Y. Hist. Col. Vol. IX. p. 67.

† N. Y. Hist. Col., vol., IX. pp. 72, 73.

son were dismissed, after having been in the service of the English nearly six years, and they returned to Canada.*

1676.

In 1676, Radisson and Des Grosselliers having obtained pardon from the French King for their defection, a company was formed at Quebec who sent them to Hudson's Bay, where they formed a settlement at the mouth of the River Bourbon.†

1679.

In 1679, Sieur Joliet prepared a narrative and maps of his voyage to Hudson's Bay, which the farmers of the revenue of Canada demanded of him. This relation is dated 27th of October, 1679, and signed, Joliet.‡

1681.

In November, 1681, Du Chesneau, the Intendant of New France, in a letter to M. de Seignelay, says :—"The English are still at Hudson's Bay, on the north, and do great damage to our fur trade. The farmers of the revenue suffer inconsequence, by the diminution of the trade at Tadoussac, and throughout the entire country, because the English draw off the Ottawa nations ; for the one and the other design, they have two forts in the said Bay—the one towards Tadoussac, and the other at Cape Henriette Marie, on the side of the Assinibouetz."§

The King of France writes to La Barre :—"The Ambassador of the King of England at Paris complained that the man named Radisson, and the other Frenchmen, having gone with two barques, called Le Saint Pierre, and La Ste Anne, into the River and Port of Nelson, in 1682, seized a fort and some property of which the English had been in possession for several years.

"Radisson and Des Grozélliers maintain that these allegations are not true, but that, having found a spot on the Nelson river adapted to their trade, more than one hundred and fifty leagues distant from the place where the English were settled in Hudson's Bay, they took possession of it in the King's name, in the month of August, 1682, and had commenced building a fort and some houses there ; that on the 14th of September following, having heard cannon, they went out to examine and on the 26th, found some beginning of houses on an island, and a vessel aground near the coast ; that these houses had been begun since they had entered the river, and had set about working at their fort and building, and therefore that they were the first occupants ; that, since then, each having wished to maintain his establishment, the French were become the masters ; that the ice and the bad weather having caused the destruction of the English ship, some men belonging to it had died ; but that they had on their part treated them with great moderation and kindness, and rendered every assistance to the English, who appeared satisfied."||

* Robson's Hudson's Bay, App. 1, pp. 6, 8.

† Callières to Seignelay, N. Y. Hist. Col. vol. IX. p. 268.

‡ N. Y. Hist. Col. vol. IX. p. 795.

§ N. Y. Hist. Col. vol. IX. p. 166.

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‡ Ibid, p. 798.

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The English account is somewhat different. Among the English party was John Bridger, the Governor of the Hudson Bay Company, who claimed to have arrived a few days before the Canadians. The French established themselves on the south branch, then called Ste. Therese, now Hayes River. They ordered Bridger and his party away from the country. He refused to obey. In February of the following year the English were seized and sent to the southern end of the Bay, with the exception of Gilham and Bridger, who were carried prisoners to Quebec. The son of Des Grosselliers and five others were left in possession of Fort Bourbon. Upon reaching Quebec, Bridger and Gilham were released by La Barre, and their vessel, which had been seized in Hudson's Bay, was restored to them.*

It seems that some time elapsed before the French King and his Ministry became aware of what had been done. It was not until the 10th of April, 1684, that the Minister of Marine addressed M. de la Barre, in reference to the restoration of the vessel to Gilham, which had been captured by Radisson and Des Grosselliers in Hudson's Bay. He says : — "It is impossible to imagine what you pretended, when of your own authority, without calling on the Intendant and submitting the matter to the Sovereign Council, you ordered a vessel to be restored to one Guillam, which had been captured by Radisson and Groszeliers, and in truth you ought to prevent these sort of proceedings, which are entirely unwarranted, coming under His Majesty's eyes. You have herein done what the English will be able to make a handle of, since in virtue of your ordinance you caused a vessel to be surrendered which ought strictly to be considered a pirate, as it had no commission ; and the English will not fail to say that you so fully recognized the regularity of this ship's papers, that you surrendered it to the proprietors, and they will thence pretend to conclude that they had taken legitimate possession of the River Nelson before Messrs. Radisson and Des Groszeliers had been there, which will be very prejudicial to the colony."†

On the 12th of November, 1682, M. de la Barre, Governor of Canada, writes that as to what relates to Hudson's Bay, the Company in old England had advanced some small houses along a river which leads from Lake Superior, and that as possession was taken of that country several years before, he will put an end to the disorder, and report next year the success of his design. During this year the Canadians lost a large quantity of furs, which were taken by the Hudson's Bay Company after their own vessel had returned to Quebec.‡

In 1682, the Hudson's Bay Company addressed the following petition§ to Charles II. : "May it please your Majesty :

"We, the Governor and Committee of the Company of the Adventurers of England trading into Hudson's Bay, have by Your Majesty's gracious allowance seen and preserved an extract of a late letter from Monsieur de la Barre, the present Governor of Canada, which hath been delivered by the French ambassador as a memorial of complaint that the Hudson's Bay Company do begin to make habitations and to erect forts upon the land within the said Bay, of which he assumes that the King, his master, hath taken

* Robson's Hudson's Bay.

† N. Y. Hist. Col. Vol. IX. pp. 799, 800.

‡ Ibid, p. 798.

§ MS. in Office of Trade and Plantations, obtained from Chief Justice Draper.

possession above twenty years since, in which cause if they proceed, he threatens to drive them out of the country by force, but desires Your Majesty should be advertised that he is not willing to do anything which may displease, except he may be forced thereunto.

"Whereupon Your Majesty having commanded us, who have the government of the affairs of the said Company, to give an account of their title and to the Bay and to the lands and territories thereabout, and to the trade and commerce which they have with the Indians,

"We do in all humility represent to Your Majesty, that the subjects of Your Imperial Crown have for above one hundred years last past, discovered and frequented the said bay and the rivers, islands and territories thereabout, and from time to time in the reigns of several of Your Majesty's Royal predecessors have taken possession of several places there, and that none of the subjects of His Most Christian Majesty have ever been known to sail or traffic within the said Bay.

"That about fifteen years since, some members of the said Company did adventure to make discoveries within the said bay, and by the good conduct of one Zachary Gillam, in the *Nonesuch* ketch, they discovered a river at the bottom of the said bay upon the East main, where he met native Indians, and having made a league of friendship with the captain of the said Indians, and formally purchased both the river itself and the lands thereabouts, he gave it the name of Rupert's river (his highness Prince Rupert being principally concerned in that expedition), and built a fort which in honour of Your Majesty, was called Charles fort, and took possession of the said river and all the land and territory thereabout in the name of Your Majesty, and then and there entered into a trade and commerce with the natives, which hath been ever since maintained without any interruption either from the French or others.

"That therefore Your Majesty was graciously pleased by Your royal letters Patent under Your great seal of England, to incorporate the said Adventurers, and to grant unto them and their successors for ever, all the said Bay and the streights tending thereunto called Hudson's streights, with all the lands and territories, rivers and islands in and about the said bay, and the sole trade and commerce there.

"That the forementioned agreement made by Zachary Gillam with the Indians, was afterwards repeated and confirmed with one Charles Baily, who was sent as Governor of the affairs of the Company within the said Bay, with whom Monsieur Frontenac, by his letters bearing date the 8th October, 1673, did conciliate a good intelligence and amity, without complaining of any injury done by the Company in building forts and making settlements and commerce there, or without making any pretence to the lands thereabouts. as Monsieur De la Barre, his successor, hath now done.

That since that time we have erected other forts upon the coasts of the said bay, in places more remote from Canada than Charles Fort is, *still making solemn compacts and agreements with the natives for the rivers and territories* where we have, with great expense, discovered and maintained a trade and commerce which we hope will in time turn to our benefit, and also produce a considerable emolument to Your Majesty and the nation.

"Wherefore we doubt not but by Your Majesty's royal authority and protection, the Company which hath been of Your Majesty's creation, shall be enabled to defend Your Majesty's undoubted right and their own, within the said bay—wherein never any nation but the subjects of Your Imperial Crown has made discoveries or had any commerce.

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"All which is humbly submitted to Your Majesty's gracious consideration and Your Royal pleasure. By command of His Royal Highness the Governor, and the Committee of said Company.

—1682.

ONESEPHORUS ALBIN, *Secy.*"

1683.

On the 30th of April, 1683, M. de la Barre writes to M. de Seignelay, that, "Two detachments of Frenchmen have proceeded to the north for the purpose of preventing the English of Hudson's Bay entering on French territory, and obstructing the trade the French carried on with the Asselibois, Themiscamings, Puisascamins, and Christinos."

On the 5th of August, 1683, the King writes to M. de la Barre:—"I recommend you to prevent as much as possible the English establishing themselves in Hudson's Bay—possession whereof has been taken in my name several years ago; and as Colonel Duguent (Dongan) who is appointed by the King of England, Governor of New York, has had precise orders from His Majesty to keep up a good correspondence with you, carefully to avoid everything that will possibly interrupt it, I doubt not but the difficulties you have experienced from the English will cease henceforth."

On the 4th and 9th of November, 1683, M. de la Barre writes to the King that "The people who had been at Hudson's Bay have returned, after having encountered extreme dangers. They erected a small fort in which they left a garrison of a few men, about four leagues up a river, two hundred leagues north of any English settlements. It is expected that communication can be had with it overland, as will be seen by the map he sends. He has received his Majesty's instructions respecting Hudson's Bay, and has engaged those who have organized that expedition, to form a company, and to send and purchase a ship in France."*

During this year an Ordinance of the King was promulgated, relating to the tax upon the fur trade, which provided, that all merchants and settlers of New France, who purchase beaver, moose, and peltries, in Hudson's Bay, Percé Island, and other parts of New France, Acadia excepted, shall be bound to bring said beaver and moose to Quebec, that they may be paid for them, and one-fourth retained for the Farmers of the Revenue.†

The Governor asked to be informed whether it was the King's desire that the post established at the mouth of Nelson River should be maintained or not, as he had hopes from representations which had been made to him by the Du L'Huts, of securing through the establishments made north of Lake Nipegon, the trade which was being carried on at Hudson's Bay. It will be seen presently that fur-trading establishments had been founded by Du L'Hut and others in that distant region. According to Oldmixon, in his history of the British Empire in America, the French had made a settlement about eight days' journey from the mouth of the Moose River in 1683. It will also be seen from French sources that they had others besides the one referred to.‡

In April, 1684, the King writes to the Governor of Canada that, "The King of England has authorized his ambassador to speak to me respecting what occurred in the River

* N. Y. Hist. Col. vol. IX. pp. 798, 799.

† N. Y. Hist. Col. vol. IX. p. 800.

‡ Archives de Paris 2ème Série, vol. IV. p. 263.

Nelson, between the English, Radisson and Des Grosselliers; whereupon I am happy to inform you that as I am unwilling to afford the King of England any cause of complaint, and as I think it important, nevertheless, to prevent the English from establishing themselves on that river, it would be well for you to have a proposal made to the Commandant at Hudson's Bay, that neither the French nor the English should have power to make any new establishments; to which I am persuaded he will give his consent the more readily, as he is not in a position to prevent those which my subjects would wish to form in the said Nelson's River."*

The arrangement suggested by the King in this communication, was made shortly afterwards, and the Governor of Canada, in writing to the French Government says of it:—"The convention concluded with England—that the River Bourbon or Port Nelson shall remain in joint occupation of the two Crowns—is not advantageous to the French, for the voyages of the English are too dangerous on account of their attracting the *couvreurs des bois* as much as possible, besides purchasing the beaver at a higher rate and furnishing the goods cheaper than the French. In his opinion, it would be more beneficial for the company and colony that the French merchants restore the posts at the head of the Bay which they took, and that the French should leave them Port Nelson or River Bourbon. If this arrangement were feasible, the Indians could thus be intercepted by land, for it would be useless to become masters of the upper part of the Rivers Bourbon and Ste. Thérèse, inasmuch as it is impossible to prevent the Indians trading with the English."†

"Radisson, having gone from Canada to France in the beginning of the year 1684, went then to London, and once more gave in his adhesion to the English Hudson's Bay Company, and returned to Port Nelson with five ships which they gave him, destroyed the French factories which he had himself erected with Des Grosselliers in 1682, plundered their stores, carried off sixty thousand weight of beaver, which he took to London, whither also he conveyed all the French who happened to be at Nelson, among whom was Des Grosselliers son, his nephew, and did the Company 400,000 livres damages."‡

"In 1684, the French Company fitted out two barques to proceed to Hudson's Bay, under the command of Sieur de Lamartinière. They sailed on the 19th of June, tarried at St. Paul's Bay until the 12th of July, and arrived at Port Nelson on the morning of the 22nd of September of the same year; having entered the River Ste. Thérèse, they encountered two leagues up, a boat coming towards them having five Englishmen on board, who enquired of Lamartinière what he was about in that country which was the property of the King of England. He answered that the river belonged to the King of France; that he was come to trade there; and that he wished to speak to the English Commandant. After an interview of six hours, they agreed to prosecute their trade without troubling each other, and that if any difference occurred between them, it would be decided by their masters, and that, meanwhile, Lamartinière could pass their fort. Some Frenchmen perceiving that all preparations were being made within the fort to insult the French, and that a battery of twenty-four guns was erecting to sink them whilst passing, Lamartinière reproached the governor of

* N. Y. Hist. Col. vol. IX. p. 799.

† N. Y. Hist. Col. vol. IX. p. 800.

‡ N. Y. Hist. Col. vol. IX. p. 818. Guérin's Maritime History of France, vol. III

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the fort, of whom he demanded six men as hostages, offering him as many of his. The English having refused to accede to this, Lamartinière detached during the darkest part of the night following, thirty men to surprise the English, who were alarmed by their sentinels. The French were, in consequence, obliged to retire in haste, and resolved to pass from the north to the south branch of that river, and enter another, called la Gargousse (Cartridge) River, which was opposite their ship, where they wintered half a league from the river. In June, 1685, they ascended four leagues above the English, where they made a small settlement." On the 15th of July, they set out to return to Quebec, having obtained in six weeks 20,000 livres' worth of beaver. "After having passed Hudson's Bay, they met in the strait a vessel of 40 or 50 tons burden called *The Little Pink*, which arrived without opposition. She was laden with black tobacco, merchandise for the trade, and 3,000 weight of powder, some woollens, and 400 fusils; all valued, with the vessel, at 20,000 livres. This vessel was followed by *The Great Pink*, which they did not think proper to attack. Two days afterwards they met another vessel of ten or twelve guns, commanded by Osler, on board of which was the man named Briguere (Governor Bridger), who was going to relieve the Governor at the head of the Bay. He is the same that Radisson brought to Quebec three years ago in the ship that M. de la Barre restored to him. This Governor gave them chase and obliged them at the end of two days to throw themselves into a cove at the bottom of which was a little river, where they ran aground. As the English vessel could not do the same, he left at the end of four days. Before leaving, he asked a parley of the commander of the barque, and told him that Radisson had gone with Chouars (Chouarts) his nephew, fifteen days ago, to winter in the River Ste. Thérèse, where they wintered a year. The Governor having left, they hoisted sail and arrived at Quebec on the first of October, 1685."*

It has already been observed that M. de la Barre hoped to establish communication with the Indians in the vicinity of Hudson's Bay from the trading posts north of Lake Nipegon. In a letter written by M. Du L'Hut from above the portage of Teragon, the 10th of September, 1684, he informs the Governor that he has come from Lake Nipegon that he had made the Indians all the presents necessary to prevent them carrying their beaver to the English; that he had met *Sieur de la Croix*,¹ with his two comrades, who had delivered him the Governor's despatches requiring him to omit nothing to convey his letters to the Nelson River to *Sieur Chouart*; that M. Péré is to make alliances with the savages who had retired into the country; that he will deliver the Governor's letters to M. Chouart. M. Du L'Hut informs the Governor that all the savages of the north have great confidence in him. He promises that before two years not a savage will descend to the English at Hudson's Bay; that all the nations that are to the west of the North Sea (Hudson's Bay) had promised, in the spring, to come to the fort which he had built upon the River à la Maune at the head of Lake Nipegon, and to one which he had built in the country of the Knistinos; and that he is willing to lose his life if he does not absolutely hinder the savages from

* N. Y. Hist. Col., vol. IX. p. 800.

¹ St. Croix was drowned a few years later in the St. Croix River, one of the upper tributaries of the Mississippi—a river called by his own name.

going to trade with the English.*¹ The letter of M. Du L'Hut to the Governor shows that the French had trading posts beyond Lake Nipigon at this time. How long they had been established it is now impossible to say. This letter was written eight years after Du L'Hut had built Kamanistiquia. M. Pére or Peray, whose name is incidentally mentioned by Du L'Hut, appears to be very familiar with the whole country between Lake Superior and River Nelson, eastward to Hudson's Bay. He is mentioned by M. Bellin, engineer of the marine and of the depots of Maps, Plans and Journals of the French Government, in his *Remarques sur la carte de l'Amerique Septentrionale*, who says: "In the Eastern part of Lake Nipigon, there is a river by which one may ascend to the head of Hudson's Bay. It is said this was discovered by a Canadian named Peray, who was the first to travel this route and gave his name to the river; leaving the lake and reascending about 40 leagues, there is a number of little lakes which have to be crossed, and even several portages have to be made; then there is a larger lake where the course of the waters divide; for after crossing, the river flows to the east and discharges at the head of the bay, at the entrance of which Moose Fort, of the English, is situated, and of which we have spoken in the Article upon Hudson's Bay."²

The River Perray here spoken of by M. Bellin is laid down upon the maps of Jefferys and Bell as extending from Lake Nipigon to the mouth of Moose River. Modern investigation, however, shows that the river so marked, in all probability, is a branch of the Albany,

* Archives de Paris; 2ème Serie, vol. IV. p. 263.

¹ Extrait de la lettre écrite par le Sieur Du L'Hut à Monsr. de la Barre audessus du portage de Teragon, le 10 Sept., 1684. Comme je sortais du lac d'Alemepigon j'ai fait, en juin, tous les présents nécessaires pour empêcher les sauvages de plus porter leur castor chez les Anglais. Je rencontrai le Sr. de la Croix avec ses deux camarades qui me rendirent vos dépêches où vous me demandiez de ne rien omettre pour faire tenir vos lettres à la rivière de Nelson au Sr. Chouart. Il a pour exécuter vos ordres que Monsr. Pére y soit allé lui-même, les sauvages étant pour lors tous retirés dans les terres pour faire leurs blûets. Ledit Sieur Pére sera parti ou pour tout le mois d'août passé il aura rendu vos lettres au dit Sieur Chouard.

Il me reste, Monsieur, à vous mander que tous les sauvages du nord ont beaucoup de confiance en moi, et c'est qui me fait vous promettre qu'avant deux années, il ne descendra pas un sauvage chez les Anglois à la Baie d'Hudson; ils me l'ont tous promis et s'y sont engagés par les présents que je leur ai faits et fait faire. Les Klistinos, les Assenepowalais, les gens de la Sapinière, les Openens, Dacheling, les Outoubouhys et Tabitibis qui composent toutes les nations qui sont à l'ouest de la mer du nord m'ont promis d'être le printemps prochain au fort que j'ai fait faire à la Rivière à la Maune dans le fond du lac Alemepigon, et l'été prochain j'en ferai un dans le pays des Klistnos qui les barrera entièrement. Enfin, Monsieur, je veux perdre la vie si je n'empêche absolument les sauvages de descendre chez les Anglais."

† Amerique Septentrionale, p. 71.

² "Sur la Côte Septentrionale (du Lac Supérieur) vers le milieu, on trouve les Isles de S. Ignace, qui sont à l'embouchure d'une Rivière par laquelle on remonte dans le Lac Alemepigon, éloigné de 25 à 30 lieues du Lac Supérieur. Quoique tous ces lieux soient occupés depuis longtemps par nos François-Traiteurs et par les Missionnaires, les connoissances que j'en ai n'ont pas toute la précision requise; j'ignore la grandeur et la figure du Lac Alemepigon, les Rivières qui s'y déchargent, aussi-bien que la plus grande partie de celles qui tombent dans le Lac Supérieur.

"Dans la partie Orientale du Lac Alemepigon, il y a une Rivière par laquelle on peut se rendre dans le fond de la Baie d'Hudson. On en doit la connoissance à un habitant du Canada, nommé Perray, qui fit le premier cette route et donna son nom à la Rivière; sortant du Lac, on la remonte environ 40 lieues; ensuite on trouve plusieurs petits lacs qu'il faut traverser et même faire quelques portages; ensuite il y a un Lac un peu plus grand où le cours des eaux se partage; car après l'avoir traversé, la Rivière coule à l'Est et va se jeter au fond d'Ance, à l'entrée de laquelle le Fort Anglois de Moose est situé et dont nous avons parlé à l'Article de la Baie de Hudson." pp. 70, 71.

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+ N. Y. Hist.

but it is not at all improbable that the river named Perray by M. Bellin and other geographers was the Tickameg River, which flows eastward, uniting with the English and other rivers, and which it is highly probable are all connected with the Moose as well as with the Albany River.

In a memoir on the present State of Canada, by M. de Denonville, addressed to M. de Seignelay, on the 12th of November, 1685, he says:—"We also see the English establishing themselves at the North Bay, where they will be more injurious to us than in the direction of Acadia; for if their establishments continue as they have begun, at the three places on that bay which they actually occupy, and on the River Bourbon, or Port Nelson, we must expect to see all the best of the beaver trade both as to quality and quantity in the hands of the English; if not expelled thence, they will get all the fat beaver from an infinite number of nations in the north, which are being discovered every day; they will abstract the greatest portion of the peltries that reach us at Montreal, through the Ottawas and Assinibois, and other neighbouring tribes, for these will derive a double advantage from going in search of the English at Port Nelson. They will not have so far to go, and will find goods at a much lower rate than with us. That is evident from the fact that our Frenchmen have seen quite recently at Port Nelson some Indians who are known several years ago to have traded at Montreal. The ports at the head of the Bay, adjoining the Rivers Abitibis and Nemisee (Nemisco), can be reached through the woods and seas; our Frenchmen are acquainted with the road. But in regard to the Ports occupied by the English in the River Bourbon or Port Nelson, it is impossible to hold any posts below them and convey merchandise thither, except by sea. . . . In regard to Hudson's Bay, should the King not think proper for enforcing the reasons His Majesty has for opposing the usurpations of the English on his lands, by the just titles, proving His Majesty's possession long before the English had any knowledge of the country—nothing is to be done but to find means to support the Company of the said Bay, formed in Canada, by the privilege His Majesty has been pleased this year to grant to his subjects of New France, and to furnish them for some years a few vessels of one hundred and twenty tons, only well armed and equipped. I hope with this aid, our Canadians will support this business, which will otherwise perish of itself; whilst the English merchants more powerful than our Canadians, will, with good ships, continue their trade, whereby they will enrich themselves at the expense of the colony and the King's revenue."*

In March, 1686, the Directors of the French Company obtained, from M. de Denonville, a body of Canadians and regular troops under the command of M. de Troyes. He set out overland accompanied by MM. D'Iberville, St. Helène, and Maricourt. They reached Hudson's Bay in June, and captured three of the Company's forts—Mississippi, Rupert and Albany. They did not return to Quebec until the following year. In the meantime M. D'Iberville and nine of his party captured a ship belonging to the English Company, which they loaded with peltry found in the forts they had taken.†

On the 6th of November, 1686, a treaty of neutrality was concluded between

* N. Y. Hist. Col. Vol. IX. p. 286.

† N. Y. Hist. Col. Vol. IX. p. 286; Garneau's Hist. of Canada, Vol. I; N. Y. Hist. Col. Vol. IX. p. 801.

Louis XIV. and James II. The Kings of France and England seemed for the moment to have been really anxious to put an end to the private war which was being carried on between their subjects for the possession of various districts in North America, in order to monopolize the trade with the Indians, but more especially to command the fur trade in the vicinity of Hudson's Bay. This treaty stipulated for a firm peace, union and concord, and a good understanding between their subjects in North America. By the terms of the treaty the vessels of neither Government were to be employed in attacking the subjects of the other in the colonies, nor were the soldiers of either who might be stationed in the colonies to be permitted to engage in any act of hostility against the subjects of the other. The subjects of neither Government were to give aid, by taking part themselves by furnishing supplies to the savages who might be at war with the other. They also agreed that each should hold the territories, seas, straits, and rivers of which his people were possessed at the time of signing the Treaty.

It is well to stop here for a moment, and consider the position of the subjects of the two Governments at the time Louis and James made this Treaty. For nearly twenty years the Canadians and the Hudson's Bay Company had been engaged in warfare upon the shores of Hudson's Bay. Down to 1685, the Hudson's Bay Company had erected five factories or trading posts in the vicinity of the Bay: Albany, Hayes, Rupert, York, and Severn. Before the signing of the Treaty of 1686 Albany, Hayes and Rupert had been taken possession of by the French, so that the country and Bay from Albany River southward was held by the French, while the forts north of the 55th parallel were still held by the English. And as the fourth article of the Treaty of Neutrality left each country in the possession of what they held at the time the Treaty was agreed to, France, of right, held the shores of Hudson's Bay from the 55th parallel southward. It is important to bear this in mind, because it will explain the conduct of the French Government in reference to the propositions made by the British Government subsequent to the negotiations of the Treaty of Ryswick, and with a view to a settlement under that Treaty. Had the Treaty of November 1686 been adhered to, no further difficulty or dispute in reference to the possessions of the two Crowns, upon the shores of Hudson's Bay, could have arisen. France would have retained the southern portion of the Bay, as lying within the limits of Canada, while the northern part and the adjacent coast would have remained to the King of England.

But however anxious the two monarchs may have been at the time of making the Treaty to have maintained a good understanding between their peoples, the subjects of the two Crowns in America gave but little heed to the wishes of their sovereigns, as expressed in the Treaty, and the Kings secretly sympathised with their subjects. Governor Dongan, of New York, asserted the right of Great Britain to the south shore of Lake Ontario, to the country in the vicinity of Niagara, and indeed to the whole country over which the Iroquois Indians claimed to exercise dominion, which embraced the country from the Ottawa River to the Mississippi, as far north as Michillimackinac (now Mackinaw), which the New York Governor claimed as a British possession, because a Mr.

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Roseboom had, the year before, visited it with a party of traders from Albany, notwithstanding twenty years' continuous possession by the French.

In fact, the Treaty of Neutrality seemed to have been observed by no one in America, and was soon disregarded in England by the King and his advisers.

In 1687 MM. D'Amoncourt and De Bonrepans, who were appointed Commissioners on behalf of France, and Lords Sunderland, Middleton and Godolphin on behalf of England, entered into a provisional treaty, which was concluded at Whitehall, 11th December, 1687. They had been appointed to execute the Treaty of Neutrality which had been agreed to for the purpose of settling and terminating all differences which had arisen between the subjects of the two Crowns in North America, and to fix the boundaries of their respective possessions. The commissioners made a provisional treaty which was to remain in force until the 11th of January, 1689, N. S. By this provisional treaty it was agreed that during this period of time and after, until the "Kings give some new and express order in writing, all persons and Governors and commanders of the Colonies . . .

. . . under the dominion of the two Kings in America, are absolutely forbidden to commit any act of hostility against the subjects of the said Kings, or to attack them; and the Governors and commandants are not to suffer, under any pretext whatever, that they shall do any violence; and in case of contravention on the part of the said Governors, they shall be punished, and obliged, in their own private names, to make restitution for the damage which may have been done by such contravention; and the same shall be done in the case of all other contraventions."

It does not seem that any agreement was arrived at by these commissioners. They made a report to the King the same year that the Provisional Treaty was entered into, in which they say:—"We, your Majesty's Commissioners, appointed to treat with the Ambassador and Envoy Extraordinary of His Most Christian Majesty, concerning the differences that have happened, or may, to your Majesty or the French in America, have had frequent conferences with the said Ambassador and Envoy Extraordinary, in order to obtain satisfaction for the damages your Majesty's subjects have lately sustained from the French in Hudson's Bay, with restitution of the three forts which, by surprise, were seized on by them; as also touching several other differences depending between the two Crowns. And as to the business of Hudson's Bay, having already acquainted your Majesty with our proceedings therein, we do further add as our humble opinions, that it plainly appears your Majesty and your subjects have a right to the whole Bay and Straits of Hudson, and to the sole trade thereof, so it may be fit for your Majesty to support the said Company of Hudson's Bay in the recovery and maintenance of their right, since otherwise that trade will be totally lost, and fall into the hands of the French if they be permitted to continue in possession of those forts, or of any fort or place within the said Bay or Straits."*

"Whereupon His Majesty (James II.) did declare that having maturely considered his own right and the right of his subjects to the whole Bay and Streights of Hudson, and having been also informed of the reasons alleged on the part of the French, to justify their late proceedings in seizing three forts, which for many years past have been possessed

* Pownall MSS.

by the English, and in committing several acts of hostility to "the very great damage of the English Company of Hudson's Bay, His Majesty upon the whole matter did conceive the said Company well founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof, as also upon the demand of full satisfaction for the damages they have received, and restitution of the three forts surprised by the French in the bottom of the Bay."*

This Report of the Commissioners and the resolution of the King show that the Treaty of Neutrality was no longer regarded, as demands were made by the Commissioners and rights affirmed by the King, which were expressly abandoned by the fourth Article of that Treaty. In 1688 the Hudson's Bay Company sent three vessels into Hudson's Bay to expel the French.

D'Iberville returned that year to the Bay also. The English ships were all taken by him, and their crews, who, it is said, were ill of the scurvy, were, to a man, slaughtered by the French. The reason assigned for the massacre of the English, was that D'Iberville was about to have a conference with them, and that the British had pointed two cannons loaded with grape shot to the place where he was to have had an interview with them; and that their intention was, in this way, to destroy him and his suite, as soon as he reached the place appointed. But the total destruction of the English is calculated to cast suspicion upon any statement made to their disadvantage.

In 1689 the British attacked Fort Ste. Anne, or Albany. They were repulsed, and one ship was taken by D'Iberville. The French had now several prisoners in charge; those who had been taken during the attack upon the forts, and those found on board of the captured vessel. They were all put on board one of the vessels, and permission was given them to return to England. Fort Churchill, which had been built the previous year by the English, was this year captured by the French. D'Iberville sailed for Quebec in a ship armed with twenty-four guns, and freighted with peltry.

The intelligence of this reciprocal invasion, in violation of the Treaty of Neutrality, caused a meeting at London, of Commissioners on the part of the two Crowns. They differed as to the facts, and the negotiations were postponed in consequence. The English Revolution breaking out shortly afterwards, the Commissioners did not again meet. Governor Frontenac was informed, that, in consequence of the revolution, the English were not likely to give much heed to Hudson's Bay, and that he was to afford the Canadian Company all the protection they required, both for the expulsion of the English from Hudson's Bay, and for the continuation of the trade in that quarter.†

In 1690, D'Iberville attacked Fort Nelson, but was repulsed. He surprised and took New Severn. He had at the time, under his command, three ships, *La Sainte Anne*, *Les Armes de la Compagnie*, *La Sainte Francoise*. In 1693, Fort Ste. Anne or Albany, was retaken by the British.

In 1694, Fort Bourbon or Nelson was attacked by the French, with two frigates, the *Poli* and *Salamandre*, under the command of D'Iberville, and was taken. M. D'Iberville

* Pownall MSS.

† N. Y. Col. Vol. IX. p. 428.

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sailed from Canada with 120 men. He arrived at Fort Nelson on the 24th of September, and obtained its surrender the 14th of October. It was at this time that D'Iberville defeated three British ships, capturing one and sinking a second. D'Iberville remained here for the period of fifteen months. He then left La Forest in charge as Governor, and returned to Quebec.*

In 1696, Fort Nelson was recaptured by the English, and the Governor and garrison, with all the furs, were taken to England. It was again recaptured by the French the following year.

From this time until after the signing of the Treaty of Utrecht—a period of eighteen years—the English seemed to have been in possession of Fort Albany only, which, according to the Treaty of Ryswick, they were to have surrendered to the French.

Such is a brief summary of the contest between France and England during the last half of the seventeenth century for the sovereignty of Hudson's Bay.¹

The Treaty of Ryswick, which was concluded in 1697, contained the following provisions, which related to or affected the rights of the contending parties upon the coasts of Hudson's Bay :—

ARTICLE 7 stipulates that—"The Most Christian King shall restore to the said King of Great Britain all countries, islands, forts and colonies, wherever situated, which the English did possess before the declaration of this present war. And in like manner the King of Great Britain shall restore to the Most Christian King all countries, islands, forts and colonies, wheresoever situated, which the French did possess before the declaration of war; and this restitution shall be made on both sides, within the space of six months, or sooner if it can be done; and to that end, immediately after the ratification of this Treaty, each of the said Kings shall deliver, or cause to be delivered, to the other, or to Commissioners authorized in his name for that purpose, all acts of concession, instruments, and necessary orders, duly made and in proper form, so that they may have their effect."

* Garneau's Hist. Vol. I; Abbé Ferland's Hist. 2^e pic; Recueil de Voyages du Nord par M. Jérémie, Vol. V.

1. One Bailey was sent out as the first Governor of the Hudson's Bay Company's possessions. He was located at Fort Charles, which had been built before the Charter was obtained, on Rupert River. He established the Company's trading post at the entrance of Nelson River.

In 1674, Wm. Lyddal arrived from England as Governor of Fort Albany. In 1675, Lyddal was still Governor.

John Nixon succeeded him, but what year is not certain.

In 1682, John Bridger was Governor of Fort Nelson. He was taken prisoner by Des Grosselliers, as already described. Captain Abraham came from England with supplies, who, finding Bridger gone, remained and was made Governor 1684.

In 1683, John Nixon was recalled, as Governor of Fort Albany, and Henry Seargent was appointed. He was instructed to beware of the French.

In 1690, Geyer was Governor of Fort Nelson.

In 1694, when it was taken by the French, M. Forrest was appointed Governor. He capitulated, in 1696, to Wm. Allen, Commandant-in-Chief. In 1697, it was retaken by the French, and remained in their possession until 1714. During this time the H. B. Company had only Fort Albany in their possession, and, this, by the 8th Article of the Treaty of Ryswick, they ought to have surrendered—Robson's Account of Hudson's Bay. Part II.

Article 8 provides that "Commissioners shall be appointed on both sides to examine and determine the rights and pretensions which either of the said Kings hath to the places situated in Hudson's Bay, *but the possession of those places which were taken by the French during the peace that preceded this present war and were re-taken by the English during this war, shall be left to the French by virtue of the foregoing articles.*"*

By Article seven the principle of reciprocal restitution, so far as it related to conquests made during the war, was agreed to. The *status quo ante bellum* was to be established. Lest any doubt should arise as to forts taken by the French before the war began, Article eight declares that places taken by the French in Hudson's Bay during the peace that preceded this present war, shall be left to the French by virtue of the seventh Article. This is not simply the application of the principle *uti possidetis* at the close of the war, which would have given to France all of the places taken by D'Iberville and others, which she then held; but the principle was one of mutual restoration of what had been taken during the war. England said to France, by the terms of the Treaty, "What you took from us, upon the shores of Hudson Bay, before the war began, shall remain to you, and so many of the trading posts and forts as are now in our possession of those you wrested from us before the war began, shall be restored to you within the space of six months." This is the obvious meaning of the words:—"The King of Great Britain shall restore to the Most Christian King all countries, islands, forts and colonies, wherever situated, which the English did possess before the declaration of war." Among which are "places taken by the French during the peace that preceded this present war," although retaken by the English while the war continued. Commissioners were appointed under the Treaty in accordance with the provisions of the eighth Article, but obviously they were not at liberty to question the rights of France to the possession of those places which had been taken from the English before the war began. Of these France was made the sovereign by the Treaty. The seventh Article provides for the mutual restoration of captured places. The eighth Article provides for the settlement of the rights of the respective parties to places in Hudson's Bay; but to avoid any misapprehension as to the right of France to the places taken during the peace, there are in the eighth Article the words already quoted, expressly excepting these places from the consideration of the Commissioners. The duty of the Commissioners, then, was to decide, after due examination, the rights of France and England respectively, "to places in Hudson's Bay other than those which the Treaty made unconditionally the property of France. It was not impossible for the entire country about the Bay to become, by a decision of the Commissioners, the property of France—it was impossible that it could so become a possession of England."

Where one nation is put in the possession of places which another nation also claims, the *onus* of proving a superior title rests upon the country out of possession. But this was not the case of England in reference to the places upon the coasts of Hudson's Bay, which France had taken during the peace preceding the war. She was, in respect to them, put out of court. The forum in which the parties were to be heard, and in which their rights were to be decided, was expressly enjoined from considering whether these forts

* Chalmers's Collection of Treaties, vol. I.

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ought to become the property of the King of England or his subjects. They were to be left to France under the seventh article.

In order to ascertain what places France was entitled to under article eight of the Treaty of Ryswick, it is only necessary to ascertain what places were held when the war began. The French obtained possession of Fort Rupert, or Ft. Jacques, in 1686, and it was not retaken by the English. They took Fort Mississippi at the same time, and it is doubtful whether it was ever recaptured by the English, and if at all, it was after the war began. They took Fort Albany in 1686, and it was recaptured seven years later. Fort Severn was taken by D'Iberville in 1690, just before the breaking out of the war. Fort Churchill was taken by the French in 1689, and was not retaken by the English. Fort Bourbon was taken by the French in 1682, was retaken by the English in 1684, and again captured by D'Iberville in 1694, retaken by the English in 1696, and again captured by the French in 1697, who remained in possession until 1714, when it was surrendered to the English under the Treaty of Utrecht.* It will thus be seen that the French were entitled to the possession of all these Forts, with the single exception of Fort Bourbon, all the others having been taken by the French during the peace, and were in their possession when the war began, and which they were entitled to hold in accordance with the provisions of the eighth article of the Treaty of Ryswick. This was the second settlement made between France and England in reference to their possessions in Hudson's Bay.

It might be well, before proceeding further, to consider the view taken of those official transactions, in order to see how they were regarded by the officers and stockholders of the Company at the time.

The war, which ended with the Treaty of Ryswick, was a war by William and Mary, and the English nation, against James II. and Louis XIV. The claims of the Hudson's Bay Company did not occupy an important place in the estimation of the King. More important interests were guarded by the Treaty. Its provisions relating to Hudson's Bay do not essentially differ from the fourth article of the Treaty of Neutrality. It was, in 1686, agreed "that each of the said Kings shall have and hold the domains, rights and premises in the seas, straits, and other waters of America, and in the same extent which of right belongs to them, and in the same way they enjoy them at present."

The Hudson's Bay Company, it would seem, were much dissatisfied with the provisions of the Treaty of Ryswick. They say, in a memorial, addressed during the war of succession to Queen Anne, "that the Company found their interest not comprehended in the Treaty of Ryswick, which they are far from attributing to any want of care in that gracious Prince, of his kingdom's honour and trade, and rather think their right and

* The Forts were variously named by the English and the French.

1. The first Fort built in Hudson's Bay was Fort Charles on Rupert River (see Petition of Hudson's Bay Co. to Charles II., 1682, ante, p. 132), called also Fort Rupert and Fort Jacques.
2. Fort Mississippi, Fort Louis, Fort Monsonis, or Moose Fort.
3. Fort Chechouana, Fort Albany, or Fort Ste. Anne.
4. Fort Bourbon, Fort York, or Fort Nelson.
5. New Severn or Nieu Savaane.
6. Fort Churchill, or Prince of Wales Fort.
7. Flamborough Factory.

claim was then overweighed by matter of higher consequence depending in that juncture; for by the said Treaty they found their condition much worse than it was before, by the eighth Article whereof the French were to be left in such places, situated in Hudson's Bay, as had been taken by them during the peace which preceded that war." Commissioners were appointed by the Government to adjust the differences between the two Crowns. The Hudson's Bay Company were invited to state what they would be willing to accept as the southern limit of their territory, when they addressed to the Lords of Trade the following proposal about their boundaries with the French :—

"The limits which the Hudson's Bay Company conceive to be necessary as boundaries between the French and them, in case of an exchange of places, and that the Company cannot obtain the whole straights and bays, which of right belongs to them, viz.:—

"1. That the French be limited not to trade by wood-runners, or otherwise, nor build any house, factory, or fort, beyond the bounds of 53 degrees, or Albany River, vulgarly called Chechewan, to the northward, on the west or main coast.

"2. That the French be likewise limited not to trade by wood-runners or otherwise, nor build any house, factory or fort, beyond the Rupert's River, to the northward, on the east or main coast.

"3. On the contrary, the English shall be obliged not to trade by wood-runners, or otherwise, nor build any house, factory, or fort, beyond the aforesaid latitude of fifty-three degrees, or Albany River, vulgarly called Chechewan, south-east towards Canada, on any lands which belong to the Hudson's Bay Company.

"4. As also the English be likewise obliged not to trade by wood-runners, or otherwise, nor build any house, factory, or fort, beyond Rupert's River, to the south-east, towards Canada, or on any land which belongs to the Hudson's Bay Company.

"5. As, likewise, that neither the French or English shall, at any time hereafter, extend their bounds contrary to the aforesaid limitations, nor instigate the natives to make war, or join with either, in any acts of hostility to the disturbance or detriment of the trade of either nation, which the French may very reasonably comply with, for that they, by such limitations, will have all the country south-eastward, betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part, but also a much larger tract of land than can be supposed to be to the northward, and the Company deprived of that which was always their undoubted right.

"And unless the Company can be secured according to these propositions, they think it will be impossible for them to continue long at Fort York, (should they exchange with the French,) nor will the trade answer their charge; and, therefore, if your Lordships cannot obtain these so reasonable propositions from the French, but that they insist to have the limits settled between [Albany and] York and Fort Albany, as in the latitude of fifty-five degrees, or thereabouts, the Company can by no reason agree thereto, for they, by such an agreement, will be the instruments of their own ruin, never to be retrieved."

By order of the Government Court.

(Signed)

WM. POTTER,

Secretary.

Confirmed by the
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10th July, 1700.

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No action seems to have been taken for some time. On the 22nd of January following, the Lords of Trade, after having had some discussion with the members of the Hudson's Bay Company as to their claims, directed their secretary, Mr. Wm. Popple, to address to the Governor and Deputy Governor of the Hudson's Bay Company, or either of them, the following letter:—

GENTLEMEN:—Upon consideration of what was this day offered to the Lords Commissioners for Trade and Plantations, by yourselves and other members of the Hudson's Bay Company, their Lordships have commanded me to acquaint you with their desire, that the resolution of your Court may be taken and communicated to them, whether (in case the French cannot be prevailed with to consent to the settlement of the boundaries proposed by your Court of the 10th of July last), the said court will not think fit to consent, that the limits on the east side of the bay be extended to the latitude of $52\frac{1}{2}$ degrees, with whatever further that Court may think advisable to propose, in reference to their own affairs, for the more easy settlement of all disputes between the Company and the French in Hudson's Bay.

W. P.

Whitehall, January 22nd, 170^o.

To which the Hudson's Bay Company replied as follows:—“The Hudson's Bay Company having lately exhibited to your lordships their resolution of their Court, the 10th of July last, concerning limits between them and the French in Hudson's Bay, and though the Company cannot but insist upon their undoubted right to the whole Bay and Straights of Hudson, as has been clearly made out by themselves (Fo. 73. Fo. 81),

“Yet, in obedience to your Lordships' letter of the 22nd inst., and to show how desirous they are to comply therewith, as much as in them lies, and is consistent with their future safety, they do further offer to your Lordships the following proposals of limits between them and the French in Hudson's Bay, viz. :—

“1. That the French be limited not to trade by wood-runners or otherwise, nor build any house, factory, or fort to the northward of Albany River, vulgarly called Checheauan, on the west main or coast.

“2. That the French be likewise limited not to trade by wood-runners or otherwise, nor build any house, factory, or fort to the northward of Hudson's River, vulgarly called Canute River, on the east or main coast.

“3. On the contrary, the English, upon such an agreement, do engage not to trade by wood-runners, nor build any house, factory or fort to the southward of Albany River, vulgarly called Checheauan, on the west coast, on any ground belonging to the Hudson's Bay Company.

“4. As also, the English be likewise limited not to trade by wood-runners or otherwise, nor build any house, factory or fort to the southward of Hudson's River, vulgarly called Canute River, on the east coast, on any ground belonging to the Hudson's Bay Company.

“5. That all the islands in the said Bay and Straights of Hudson, lying to the

northward of Albany River, on the west coast, and of Hudson's River, vulgarly called Canute River, on the east coast, shall be and remain to the English.

"Likewise that all the islands in the said Bay of Hudson, lying to the southward of Albany River, on the west coast, and of Hudson's River, vulgarly called Canute River, on the east coast, shall be and remain to the French.

"7. That neither the French or English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, or instigate the natives to make war, or join with either in any acts of hostility, to the disturbance or detriment of the trade of either nation.

"These terms the Company are willing to agree to, upon condition they may be secured from any claim that has been or may be made on them, by virtue of the 8th Article of the Treaty of Ryswick, or by any other matter or thing relating to the said Treaty. And if the French think fit to accept thereof, the Company are willing to exchange places with them, but not without settling of limits; for that the said 8th Article, which saith there shall be an exchange of places, doth also say that the limits shall likewise be settled, and it would seem very unreasonable that one should be performed without the other. As to the Company's naming of rivers as boundaries, and not latitudes, the same is more certain and obvious, both to the natives as well as Europeans, and the contrary impracticable; nor can the latitude be so well laid down in that wild country, the Indians well knowing the one, but not the other.

"But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Streights of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claims), though the first step in the said article of Ryswick directs the doing of it."

By order of the General Court of the said Company.

(Signed)

WM. POTTER,

Secretary.

January 29th, 1701.

Nothing was done on the above, the French declining the terms proposed, and desiring the 55th parallel, which the Company would not accept.

Upon the 9th of January, 1702, the Lords Commissioners for Trade and Plantations invited the Hudson's Bay Company "to lay before them whatever they may think fit to offer in relation to the trade and security of the place at this time."¹

¹ The communication is as follows:—

"To the Deputy-Governor of the Hudson's Bay Company. The Lords Commissioners for Trade and Plantations have commanded me to signify to you their desire that the Hudson's Bay Company would lay before them whatever they may think fit to offer in relation to the trade and security of that place at this time.

I am,

Sir,

Your most humble servant,

W. P. (OFFER.)

Whitehall, January 9th, 1704

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In response to this invitation, they received the following communication :—

[“Memorandum from the Hudson's Bay Company representing the state of their affairs at present, and what they desire.]

“*To the Honourable the Lords Commissioners for Trade and Plantations.*

“The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay.

“SHEWETH :

“That the said Company being required by your Lordships to give in what they thought necessary in relation to their trade, and the security of their factory in Hudson's Bay, do with all submission lay before your Lordships the true state and condition thereof.

“They will not trouble your Lordships with a repetition of their undoubted rights to all Hudson's Bay, and that the French never laid claim to the same, or ever sailed a ship or vessel into those parts since the creation of the world, till the year 1682 (many years after the incorporation of this Company), and then in a piratical manner, without any commission or authority from His Most Christian Majesty, who was afterwards pleased to disown the said proceeding, as the Company have and are still ready to prove.*

“These matters have been so fully and clearly made out by them, that even the French themselves, with all their sophistry and equivocation, have not been able to disprove.

“Therefore we shall proceed to inform your Lordships of the present melancholy prospect of their trade and settlement in Hudson's Bay, and that none of His Majesty's plantations are left in such a deplorable state as those of this Company, for by their great losses by the French, both in times of peace as well as during the late war, together with the hardships they lie under by the late Treaty of Ryswick, they may be said to be the only mourners by the peace.†

* The Company were mistaken. His Most Christian Majesty severely censured Governor La Barre for releasing Gilham's vessel, the transaction here referred to, and in no instance did he censure the French for what they did to the English at Hudson's Bay.

† Upon the English posts in the vicinity of Hudson's Bay, M. Bellin makes the following observations :—
... il reste à donner une idée des établissemens que les Anglois ont aujourd'hui sur ces côtes. On en compte sept ; à cinq desquels il y a des Forts ; savoir le Fort du Prince de Galles, le Fort d'York, la Factorie de la Flamborough, celle de Henley, le Fort Albani, le Fort Moose, et le Fort Rupert.

1. Le Fort du Prince de Galles, par la latitude de 58 degrés 50 minutes, et par les 97 degrés 15 minutes longitude occidentale du méridien de Paris, est situé dans une petite Isle à l'embouchure de la Rivière de Churchill, qui a porté pendant long-temps, comme on le voit dans les cartes, le nom de Rivière de Muriell, ou Rivière Danoise et que les Anglois ont changé depuis quelques années en celui de Churchill. Les navires peuvent hyverner dans ce Port, en prenant des précautions pour leur sûreté et pour celle des équipages, car l'hyver y est très long et des plus rigoureux ; les terres y sont incultes, mais couvertes de bois qui ne sont pas de si belle qualité que quelques Relations le disent ; la pêche et la chasse sont les seules ressources qu'on tire du Pays, encore manquent elles souvent ; et il n'y a que le commerce des Pelletteries que l'on fait avec les sauvages qui viennent de l'intérieur des terres, qui puisse engager à soutenir cet établissement.

2. Le Fort d'York, éloigné d'environ 60 lieues par mer de celui du Prince de Galles, est situé par la latitude de 57 degrés trente minutes, et par les 95 degrés 40 minutes de longitude occidentale du méridien de Paris. Ce Fort est placé sur la Pointe Septentrionale d'une isle à laquelle on donne plus de 60 lieues de long

"They cannot but inform your Lordships that the only settlement the Company have now left in Hudson's Bay (of seven they formerly possessed) is Albany Fort, vulgarly called Chicheauan, in the bottom of the said Bay, where they are surrounded by the French on every side, viz., by their settlements on the lakes and rivers from Canada to the northwards, towards Hudson's Bay, as also from Port Nelson (old York Fort,) to the southward; but besides this, the Company have, by the return of their ship this year, received certain intelligence that the French have made another settlement at a place called New Severn, 'twixt Port Nelson and Albany Fort, whereby they have hindered the

sur 7 à 8 de large et qui fait la separation de deux Rivières celle de Nelson du côté du Nord, et celle de Hay du Côté du Sud; la première a porté longtems le nom de Rivière de Bourbon et la seconde celui de Sainte Thérèse; c'est sur cette dernière que les François s'établirent en 1682, comme nous l'avons dit ci-devant. En remontant la Rivière de Hay, et à 40 lieues de son embouchure les Anglois ont une factorie qu'ils appellent Flamborough, placée dans une petite Isle; mais le mouillage des navires est en-dedans de la Rivière de Nelson, proche le Fort York, ce qu'ils appellent Le Port Nelson. La Rivière de Bourbon ou de Nelson vient de fort loin dans les terres, et communique avec un Grand Lac sur lequel nous avons un Etablissement, et dont nous parlerons à l'article de la Nouvelle France; depuis le Fort d'York, jusqu'à celui d'Albany; entre le Port de Nelson et le Cap Henriette-Marie, on trouve une Rivière assez considérable, que les François avoient nommée Rivière des Saintes Huiles; les Anglois ont changé ce nom en celui de New Severn, ils ont un Etablissement à son embouchure, mais il est détruit aujourd'hui.

3. Le Fort Albany. Cet Etablissement est le plus considérable que les Anglois aient dans la Baie, le Fort est bon, et en état de défense; il est situé dans une petite isle à l'embouchure d'une Rivière assez considérable, qui porte aujourd'hui le nom d'Albany. Les sauvages, lorsque les François s'y établirent l'appelloient Quitchide Chouen, nous lui donnâmes le nom de Sainte Anne, aussi bien qu'au Fort, et ces noms ont subsisté long-tems, et se trouvent dans les anciennes Cartes. Cette Rivière sort d'un Lac qui portoit le même nom, et sur le bord duquel nous avions un Poste, nommé Saint Germain; les Anglois ont établi une factorie à cet endroit, et l'appellent Henley; mais c'est peu de chose.

4. Le Fort de Moose, situé au fond de la Baie de Hudson, à quarante lieues au sud de celui d'Albany; il a porté les noms de Monsipy ou Monsony, et pendant longtems celui de Saint Louis, aussi bien que la Rivière à l'embouchure de laquelle il est bâti sur une petite Isle; cette Rivière de Saint Louis, aujourd'hui de Moose, vient du sud, et son cours n'est pas fort étendu; ses sources ne sont pas à trente lieues de la Baie de Hudson, et sont voisines du Lac des Abitibis, dont il n'y a qu'un portage peu considérable jusqu'à cette Rivière.

La Rivière de Moose n'est pas la seule qui se décharge dans la Baie, à l'entrée de laquelle on a bâti le Fort Moose; on trouve sur la Côte occidentale de cette Baie la Rivière de Perré, qui court du couchant à l'Orient et qui communique avec le Lac Alimipegon, éloigné du Fort de Moose d'environ cent lieues; elle porte le nom d'un habitant du Canada qui vint dans la Baie de Hudson par cette Rivière.

5. Le Fort Rupert (en François Robert) est situé sur la Côte Orientale de la Baie de Hudson, à environ vingt lieues du Fort de Moose; il est bâti près de l'embouchure d'une Rivière qui porte le nom de Rupert et de Nemiscan; cette Rivière qui fait beaucoup de sinuosité, sort d'un petit lac qu'on appelle Lac de Nemiscan éloigné de vingt petite lieues au plus de la Baie, en ligne directe, mais infiniment plus en suivant le cours de la Rivière; du même lac cette Rivière de Nemiscan communique avec le Grand Lac des Mistassins, et la distance de l'un à l'autre n'est pas de trente lieues, quoique le chemin est des petits lacs qu'elle forme dans cet espace.

A 10 lieues au Nord de la Rivière Rupert, les Anglois ont une Factorie au fond d'une petite anse dans laquelle se décharge un bras de la Rivière de Slude, mais elle est abandonnée aujourd'hui. En remontant le long de la Côte Orientale à 100 lieues au Nord du Fort Rupert, leur dernière Carte marque un Etablissement auquel elle donne le nom de Fort de Richemont; j'ignore s'il a jamais existé; car il faut être extrêmement en garde contre leurs Cartes, ce qu'il y a de certain, c'est qu'il est abandonné."—*Bellin's Remarques*,

"J'ai remarqué dans plusieurs Cartes Angloises, et surtout dans celles nouvellement publiées, que les Géographes pour se rendre agréables à la Notion, marquoient des Postes et des Etablissements où l'on sait très certainement qu'ils n'en ont jamais eu comme je le démontrerai dans la suite de ces Remarques."—*Note M. Bellin's Remarques*, p. 13.

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Indians from coming to trade at the Company's factory, at the bottom of the Bay, so that the Company, this year, have not received above one-fifth part of the returns they usually had from thence, insomuch that the same doth not answer the expense of their expedition.

"The Company being by these and others, their misfortunes, reduced to such a low and miserable condition, that, without His Majesty's favour and assistance, they are in no ways able to keep that little remainder they are yet possessed of in Hudson's Bay, but may justly fear in a short time to be deprived of all their trade in those parts, which is solely negotiated by the manufacturers of this kingdom.

"Upon the whole matter, the Company humbly conceive they can be no ways safe from the insults and encroachments of the French so long as they are suffered to remain possessed of any place in Hudson's Bay, and that in order to dislodge them from thence (which the Company are in no way able to do,) a force of three men-of-war, one bomb-vessel, and 250 soldiers, besides the ships' company, will be necessary, whereby that vast tract of land which is of so great concern, not only to this Company in particular, but likewise to the whole nation in general, may not be utterly lost to this kingdom.

"All which is humbly submitted to your Lordships' great wisdom and judgment, by the Governor and Company of Adventurers of England, trading into Hudson's Bay.

"W. POTTER,

"Secretary.

"Hudson's Bay House,

"The 19th January, 170 $\frac{1}{2}$."

These memorials and other communications of the Hudson's Bay Company show very clearly how they understood the Treaty of Ryswick. They were ready to accept the Albany River—or the 53rd parallel of north latitude—as the boundary on the west coast, and Rupert River, or even Hudson's or Canute River, as the boundary on the east; but they wished to be secured against any claim that the French had made or might make on them under the Eighth Article of the Treaty of Ryswick. They were ready to give up Fort Albany and accept the Forts to the north of the boundary which they had proposed, but only upon condition that the limits were definitely settled. They said that if the limits they proposed "are not accepted they will not feel themselves bound by this or any former concession of like nature, but must insist upon their right to the whole Bay." Whatever might have been the right of the Company before the ratification of the Treaty of Ryswick, the claim to the whole Bay, after the treaty was ratified, was a most untenable one. If the Company ever had any such right (which is denied), the Eighth Article of the Treaty put it out of the power of the English Government to make so extravagant a demand. The Company, as we have seen, asked to be "secured against any claim that has been made, or that may be made on them under the Eighth Article of the Treaty of Ryswick." In making this request they admitted that a claim might be made. It is easy to understand what the claim was. It is plain that the Eighth Article of the Treaty made the Forts and settlements which the French had taken from the Hudson's Bay Company before the war, French possessions. They were, by the Seventh Article, to remain to France, and those Forts which had been retaken by the English during the war, were to be restored

as the rightful possessions of France. By the Treaty of Ryswick, Fort Albany became a possession of France. The Company proposed a line of action, which was wholly at variance with the provisions of the Treaty. They were not willing to surrender Fort Albany, in compliance with the terms of the Treaty, without an equivalent, which, by the Treaty, they had no right to demand. What the Company sought was not a fulfilment, but an amendment of the Treaty of Ryswick. The feature of the Treaty to which the Hudson's Bay Company felt the greatest repugnance, because it was the one most damaging to their interests was this—that no boundary line could be drawn in compliance with its provisions, which would exclude the French from the territory that would remain to the Company, as during the peace, which preceded the war, they had taken possession of places extending through ten degrees of latitude. The propositions and memorials of the Hudson's Bay Company, to the British Government, show that they were most anxious to have a boundary of mutual exclusion which, under the Treaty, was impossible. They wanted, in exchange for Fort Albany, the places held by the French north of the line of division, which the Company expressed themselves ready to accept as a boundary between Canada and their possessions. The Hudson's Bay Company were well aware that any settlement which could be made under the Treaty, must leave the Fur Trade of Hudson's Bay practically in the hands of the French. The French held Severn, Nelson and Churchill Rivers. The possession of these rivers gave them the command of the Fur Trade north of the proposed boundary, as they were the channels by which the Indians reached the coast. The possession of the country, without the possession of the trading posts at the points where the Fur Trade must be carried on, would have been of no value to the Company. Keeping these facts in view, we can fully appreciate their efforts to escape from the stipulations of the Treaty, and to proceed with the Commission for the settlement of the respective rights of the two Crowns, as if there had been no agreement on the part of England to leave France in possession of all she held before the war.

No action, however, seems to have been then taken, nor was any correspondence had with the Government until further information was asked for by the Government, in view of negotiations for peace at the Hague in 1709, when the following letter was addressed :—

"To the Governor or Deputy-Governor of the Hudson's Bay Company.

"SIR,—The Lords Commissioners of Trade and Plantations, having under consideration some matters relating to the French encroachments upon Her Majesty's dominions in America, they have commanded me to desire that you will let them have, as soon as possibly you can, an account of such encroachments as the French have made upon the territories and places within the limits of the said Company's charter.

"I am, sir,

"Your most humble servant,

"WM. POPPLE.

"Whitehall, May 19th, 1709."

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To this letter they replied on the 23d of the same month, "setting forth their right and title to that place, and praying restitution may be insisted upon from the French for the robberies committed by them in times of perfect amity." ¹

On the 21st of December, 1711, the Hudson's Bay Company addressed to Queen Anne the following petition :—

"To the Queen's Most Excellent Majesty :—

"The petition of the Governor and Company of Adventurers of England, trading into Hudson's Bay,

"HUMBLY SHEWETH :—

"That your petitioners are far from enquiring into the great affairs of your Majesty's glorious Government, especially as what relates to war and peace, both which they know your high wisdom will so order as shall be most for the good of your whole people ; but believing the justice of your cause, and the terror of your arms, must soon reduce the French to sue for such a peace as all Europe desires and wants, your petitioners crave leave, with the profoundest duty, to submit the hardships of their case to your Royal consideration :

"That the French, in time of perfect amity between the two kingdoms, viz., Anno 1682, did arbitrarily invade the Company's territories at Port Nelson, burn their houses, and seize their effects.

"That in the years 1684 and 1685, they continued their depredations.

"That in the year 1686, they forcibly took from the Company three factories, viz.: Albany Fort, Rupert, and Moose River Forts, which violent proceedings they continued in the years 1687 and 1688, the whole damages done by the French to the Company, in times of peace, amounting to £108,514 19s. 8d. as your petitioners are ready to make appear, besides interest for the same.

"That in the year 1685, they supplicated his then Majesty, King James the Second, to interpose on their behalf, and by his Ambassadors at the French Court to demand a reparation for the damages done to the Company, and restitution of the places unjustly taken from them by the French in times of peace ; whereupon commissioners were appointed by His Majesty, viz., the Earl of Sunderland, the Earl of Middleton, and the Lord Godolphin, to treat with the French Commissioners, who, on the 10th November, 1687, reported the right of your petitioners, upon which King James was pleased to declare that 'he conceived the Company well founded in their demands, and therefore, did insist upon his own right and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof ; as also upon the demand of full satisfaction for the damage they had received, &c.' The copy of which report and His Majesty's resolutions thereon, is hereunto annexed. This was translated and declared towards the latter end of 1687, at which time the Lord Churchill, Duke of Marlborough, was Governor of the Company, and memorials were repeated by the said King's command at the French Court

1. The reply of the Company is not given by Pownall, but it is marked as being included in Bundle A. 46. It was copied by the writer from some old book, but he has not preserved it, nor does he remember where it is. His recollection is that it is nearly the same as that of two years later date.

so pressing for satisfaction and restitution, that your petitioners had certainly been relieved and restored to their rights, but for the war, which soon after broke out between the two kingdoms.

"That upon the late King William's accession to the throne, the Company renewed their claim to their territories, and for reparation of damages sufficient from the French in times of full peace, of which His said Majesty was so sensible, that he was pleased to make the proceedings of France in that affair, one of the causes and articles of his declaration of war against the French King, in haec verba:—'But that the French King should invade over Charibb Islands and possess himself of our territories of the Province of New York and Hudson's Bay in an hostile manner, seizing our Forts, burning our subjects' houses, and enriching his people with the spoils of their goods and merchandizes; detaining some of our subjects under the hardships of imprisonment, causing others to be inhumanly killed, and driving the rest to sea in a small vessel, without food and necessaries to support them, are actions not even becoming an enemy, and yet he was so far from declaring himself so, that at that very time, he was negotiating here in England, by his Ministers, a Treaty of neutrality and good correspondence in America,'—so that your petitioners did wait patiently the end of that war, not doubting but to have justice done to them, when a peace was concluded.

"But so it is, may it please your most Excellent Majesty, that the Company found their interest not comprehended in the Treaty of Ryswick, which they are far from attributing to any want of care, in that Gracious Prince, of this Kingdom's honour and trade, and rather think their rights and claims were then over-weighed by matters of higher consequence depending in that juncture; *for by the said Treaty they found their condition much worse than it was before,—by the 8th Article whereof, the French were left in possession of such places situated in Hudson's Bay, as had been taken by them during the peace which had preceded that war.*

"That at a meeting of Commissioners on both sides (as directed by the said Treaty to adjust these differences), the Company did again set forth the undoubted right of the Crown of England to the whole Bay and Streights of Hudson, against which nothing but sophistry and cavels were offered on the French side, and the matter remained undetermined.

"*That the only settlement now remaining to the Company in those parts (of seven they formerly had), is Albany Fort, on the Checheawan, where they are surrounded by the French on every side, viz. : By their settlements on the Lakes and Rivers from Canada to the northward towards Hudson's Bay, as also from Port Nelson (at Fort York). To the southward the French have likewise made another settlement between Port Nelson and Albany Fort, whereby the Indians are hindered from coming to trade with the English factories on the bottom of the Bay, and if they are suffered to fix and fortify in those parts, and all question they will deprive your Majesty's subjects of that tract of land, which is so large a part of your American dominions, and rightly belongs to the Crown of Great Britain.*

"That not only your Majesty's glory is concerned to preserve those plantations, but it very much imports the general trade of your kingdom. Since your petitioners, notwithstanding the losses and discouragements they have laboured under, and during the war, have brought from thence between 30,000 and 40,000 skins per annum, and doubt not

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if they were reinstated in their possessions, according to their charter, to bring the said importation to 100,000 skins per annum.

"That the said country doth abound with several other commodities (of which your petitioners have not been able to begin a trade, by reason of the interruptions they have met with from the French), as with whale-byt, whale-bone, (of which last, your subjects now purchase from Holland and Germany, to the value of about £26,000 per annum, which may be had in your own dominions), besides many other valuable commodities which in time may be discovered.

"That if the French come once to be entirely possessed of Hudson's Bay, they will undoubtedly set up whale fishing in those parts, which will greatly tend to the increase of their navigation and to their breed of seamen.

"That there is carried thither and consumed there, nothing but of the product and manufacture of England, your petitioners encouraging and daily bringing the Indians to wear coarse cloth instead of skins, which in process of time will considerably advance the woollen trade at home.

"That it needs must reflect upon the honour of Britain to relinquish to the French that territory, of which their violent usurpation in a time of peace was alleged as a main article in the first declaration of war against that kingdom.

"That if the French could pretend to any right to the said territories by the peace of Ryswick, this right must needs be determined by their notorious infraction of the said treaty.

"The premises considered, when your Majesty in your high wisdom shall think fit to give peace to those enemies whom your victorious arms have so reduced and humbled, and when your Majesty shall judge it for your people's good to enter into a treaty of peace with the French King; your petitioners pray that the said Prince be obliged, by such treaty, to renounce all right and pretensions to the Bay and Streights of Hudson, to quit and surrender all posts and settlements erected by the French, or which are now in their possession, as likewise, not to sail any ships or vessels within the limits of the Company's Charter, and to make restitution of the £108,514.19s.8d., of which they robbed and despoiled your petitioners in times of perfect amity between the two kingdoms.

"And your petitioners, as in duty bound, will ever pray."

It is very obvious from the statements contained in this petition, and others already cited, that Albany Fort was the only trading post in the possession of the Company from the signing of the Treaty of Ryswick until 1711, and it will be seen from other documents, that it was the only post held by the Company until surrender was made by the French under the Treaty of Utrecht, of the various posts upon the shores of Hudson's Bay. There are some statements in this petition which are not strictly true; the King of France never disowned the proceedings of the French against the English in the vicinity of Hudson's Bay. Disputes arose as to the facts, and the French authorities denied representations made in reference to the conflict at Port Nelson; but in no case did the French authorities ever admit that the proceedings of those who were acting in the interest of the Canadian fur traders, were contrary to the wishes of their government. In no case did the French King disown, as they allege, the proceedings of his subjects.

The Company, in their various petitions and memorials, complain that their interests were not comprehended in the Treaty of Ryswick, and they pressed the British Government to act as if that Treaty in no way bound them, and to insist upon their extreme pretensions just as if no such treaty had been made. The Hudson's Bay Company admit in their various memorials and petitions that by the 8th Article of the Treaty of Ryswick their rights had been sacrificed, as the French were left in possession of all such places as had been taken by them during the peace which had preceded that war. We have seen this arrangement left the Hudson's Bay Company in possession of but a single post. The success of England and her allies in the war, growing out of the disputed succession to the throne of Spain, led the Company to hope that when peace came to be made, they might secure more favourable terms than those obtained for them by the Treaty of Ryswick.

On the 22nd of April, 1711, Count De Torcy, on behalf of the Government of France, made propositions with a view of bringing about a peace, but those propositions contain no allusion to Hudson's Bay. Upon receipt of Count De Torcy's overtures, the English Government made certain preliminary demands, among which was this, "that Newfoundland, Hudson's Bay and Straits, shall be completely restored to the English. Great Britain and France shall respectively keep and possess all the countries, domains and territories in North America that each nation shall be in possession of at the time when the ratification of the Treaty shall be published in those parts of the world." The French in their answer, say in reply to this demand, that, "The discussion of this article shall be deferred to the general conferences for the peace, it being well understood the right of fishing and drying cod upon the Island of Newfoundland be reserved to the French." In the preliminary articles signed by M. Mesnager on behalf of France, no further reference is made to Hudson's Bay.

While the negotiations with a view to peace, were being carried on between the two Courts, the Hudson's Bay Company addressed to the Lords Commissioners of Trade and Plantations the following memorandum, setting forth "what they desire may be stipulated for them at the ensuing Treaty of Peace."

"The memorandum of the Governor and Company of Adventurers of England, trading into Hudson's Bay:—

"That for avoiding all disputes and differences that may in time to come arise between the said Company and French settled in Canada, they humbly represent and conceive it necessary:

"That no wood-runners, either French or Indians, or any other person whatever, be permitted to travel or seek for trade beyond the limits hereafter mentioned;

"That the said limits begin from the island called Grimington's Island or Cape Perdrix, in the latitude of $58\frac{1}{2}$ north, which they desire may be the boundary between the English and French, on the coast of Labrador, towards Rupert's Land, on the east main, and Nova Britannia on the French side, and that no French ship, barque, boat or vessel whatsoever, shall pass to the northward at Cape Perdrix, or Grimington's Island, towards or into the Straights or Bay of Hudson, on any pretence whatsoever;

"That a line, supposed to pass to the south-westward of the said Island of Grimington, or Cape Perdrix, to the great lake Miskosinke at Mistoveny, dividing the same into two parts, (as in the map now delivered,) and that the French nor any others employed by them, shall come

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to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever, and the English, on the contrary, not to pass the said supposed line, either to the southward or eastward.

"That the French be likewise obliged to quit, surrender, and deliver up to the English, upon demand, York Fort (by them called Bourbon), undemolished; together with all forts, factories, settlements, and buildings whatsoever, taken from the English, or since erected or built by the French, with all the artillery and ammunition, in the condition they are now in, together with all other places they are possessed of, within the limits aforesaid, or within the Bay and Streights of Hudson.

"These limits being first settled and adjusted, the Company are willing to refer their losses and damages formerly sustained by the French in times of peace, to the consideration of Commissioners to be appointed for the purpose.

"By order of the Governor and Company of Adventurers of England, trading into Hudson's Bay.

"Hudson's Bay House, 7th February, 1711."

At the end of this memorandum the Company appended the following:—

"NOTE.—The said Company are, by their charter, constituted Lords Proprietors of all those lands, territories, seas, streights, bays, rivers, lakes and soundings, *within the entrance of the streights*, to hold the same of Her Majesty's manor of East Greenwich, in the County of Kent."

This memorandum is the second communication in which the Company undertake to draw a line to define the limits of the territory granted by their charter. They had before undertaken to draw a conventional line under the provisions of the Treaty of Ryswick. They then expressed their willingness to accept the 53° parallel of north latitude, on the west side of the Bay, and Rupert's River upon the east side.

In the memorandum of the 7th of February, 1712, they claim what they then maintained had been granted to them by the terms of their charter. Their communication shows that they disregard the provisions of the Treaty of Ryswick, and look to have secured to them what, by the terms of their charter, they think they can claim. They draw the boundary upon the eastern side of their territory from Cape Perdrix, in latitude 58° 30' north, "to the south-westward to the great Lake Miskosinke or Mistoveny dividing the same into two parts," as shown in a map which they submit to the Lords of Trade, along with their memorandum. This line was not extended beyond the south-western border of the lake. It is from the location of this line and the words of exclusion, with the view of protecting the fur trade to the Company within the territory they claimed, that the exact extent of territory they demanded may be precisely ascertained. This is a most important document, because we learn from it the exact extent of territory the Company claimed upon the eve of the negotiation of the Treaty of Utrecht, and there is good reason for holding that the British negotiators did nothing more than demand from the French what the Company claimed, in the various petitions and memorials of the Company.

On the 19th of February, 1711, the Lords of Trade and Plantations enclosed to the Earl of Dartmouth the petition of the Hudson's Bay Company of the 21st of December preced-

ing, and the memorial relating to the settlement of the boundaries which has just been referred to, with a view of securing the settlement through the British Plenipotentiaries at Utrecht.

In March, 1712, the King of France proposed, in relation to Hudson's Bay, "to give up to Great Britain the Streights and Bay of Hudson;" but to retain to himself the liberty to withdraw the cannon and other warlike stores. The English Ministry insisted that the cannon and stores should remain for England, and to this demand the French King consented. The French further proposed that within a year of the peace, Commissioners should be appointed to ascertain the boundaries of Canada or New France on the one side, and the land of Hudson's Bay on the other, and to settle in a friendly manner all just and reasonable reompenses, insisted upon on both sides, for injuries done prejudicial to the rights of peace and war; they proposed that the boundaries being once settled, the subjects of both Crowns should be reciprocally prohibited from passing the same, whether by land or sea; and that the subjects of neither Crown should disturb the trade of the subjects of the other, nor was the one to molest the Indians who were allies or subjects of the other.*

After a great deal of correspondence had passed between the English and French Governments—especially between Lord Bolingbroke and Count De Torcy—the Treaty of Utrecht was concluded in March, 1713, "when," as Lord Mahon says, "England offered far better terms to the French than they were willing to accept at Gertruydenberg in 1709."† The provisions relating to the claims of France and England in Hudson's Bay are as follows:—

"ARTICLE X.—The said Most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full right, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situated in the said bay and straits, and which belong thereunto, no tracts of land or sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made, in the condition they now are, and likewise all fortresses there erected, either before or since the French seized the same, shall within six months from the ratification of the present Treaty, or sooner if possible, be well and truly delivered to the British subjects having commission from the Queen of Great Britain to demand and receive the same, entire and undemolished, together with all the cannon and cannon-ball, and with the other provisions of war usually belonging to cannon. It is, however, provided, that it may be entirely free for the Company of Quebec, and all other, the subjects of the Most Christian King whatsoever, to go by land or sea, whithersoever they please out of the lands of the said bay, together with all their goods, merchandizes, arms, and effects of whatever nature and condition soever, except such things as are above reserved in this Article. But it is agreed on both sides to determine within a year by Commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French, which limits both the British and the French subjects shall be wholly forbidden to pass over, or thereby go to each other by sea or by land. The same Commissaries shall also have orders to describe and settle the boundaries between the other British and French colonies in those parts.

* Plan of Peace, Bolingbroke's Correspondence, vol. II, p. 286.

† Lord Mahon's History of England, Vol. I, p. 6.

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"ARTICLE XI.—The above-mentioned Most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons and goods, by the hostile incursions and depredations committed by the French in time of peace, an estimate being made thereof by Commissaries to be named at the requisition of each party."

It is important to ascertain as nearly as possible the extent of territory surrendered by the French under the Tenth Article of the Treaty of Utrecht; to ascertain, if possible, what lands Great Britain received, and what tracts France restored under the words—"the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situated in the said bay and straits, and which belonged thereunto, no tracts of land or sea being excepted which are at present possessed by the subjects of France." These words are very indefinite, and unless some understanding had been come to between the Governments of France and England as to the location of the separating line, it is impossible to conceive how a common understanding could ever be reached by commissioners who might be appointed to give effect to this provision of the Treaty. We know that such an understanding was had, and that the representatives of the two Governments drew lines upon a map, inclosing Hudson's Bay and the adjacent territory which France had agreed should be restored to England. The French Government it seems were afraid that a much larger extent of country under the Tenth Article of the Treaty might be claimed than they were willing to give up. Looking at all the circumstances attending the disputes between the two countries in reference to that region, and looking to the words of the Treaty that no tracts of lands or sea were to be excepted from the restoration, which were then in the possession of the subjects of France, to have claimed the whole basin of Hudson's Bay, would have been a very forced construction. The words of the Treaty, just quoted, and the attendant circumstances, show that what was claimed by England, and yielded by France, was the Bay and the country upon its margin. Nevertheless the language of the Treaty did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the lands' height. France too, consented with reluctance to the use of the word restoration instead of cession. It was asking her to admit that she had no rights in the country although her rights were recognized by the Treaty of Ryswick. To prevent further disputes, in reference to this territory, the lines were drawn upon the map, as I have already stated. In a memorial addressed by the Marquis de Torey to Mr. Prior, one of the English Plenipotentiaries at the French Court, dated the 7th of January, 1713, N. S., he says :—"The Plenipotentiaries of Great Britain insist that it shall be expressed that France shall restore *not only what has been taken from the English, but also all that England has ever possessed in that quarter.* This new clause differs from the plan, and would be a source of perpetual difficulties ;¹ but to avoid them the King has sent to his Plenipotentiaries the same map of North America, as had been furnished by the Plenipotentiaries of Great Britain. His Majesty has caused to be drawn upon this map a line which describes

* Chalmers' Collection of Treaties, Vol. I, pp. 378, 379, 380.

1. As to the plan, see Lord Bellingbrooke's Correspondence.

the boundaries in such a manner that he has reason to believe they may easily agree as to this point on both sides."

On the following day¹ Mr. Prior wrote to Lord Bolingbroke as follows:—"As to the limits of Hudson's Bay, and what the ministry seem here to apprehend, at least in virtue of the general expression—*tout ce que l'Angleterre a jamais possédé de ce côté-là* (which they assert to be wholly new, and which I think is really so, since our Plenipotentiaries make no mention of it)—*may give us occasion to encroach at any time upon their Dominions in Canada, I have answered, that since, according to the carte which came from the Plenipotentiaries marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determine that difference must be guided by the same carte. I thought that the article would admit of no dispute in case it be either determined immediately by the Plenipotentiaries or referred to Commissioners.* I take leave to add to your Lordship that these limitations are not otherwise advantageous or prejudicial to Great Britain, than as we are better or worse with the native Indians, and that the whole is rather a matter of industry than dominion."

From Mr. Prior's letter it manifest that the extreme pretensions of both governments were marked upon the map to which he refers, and that it was intended when a Commission came to be appointed they should not seek for a boundary under the Treaty elsewhere than within the country lying within these lines. It is obvious from these letters, that England was not to receive the whole country drained into Hudson's Bay.

This would be the most extreme demand that the British Government could have made. It was a demand of this sort that France feared might be made. These letters show that the actual demand fell far short of this. As has been already stated, it would indeed be a very forced construction of the Tenth Article of the Treaty of Utrecht to uphold such a demand. Had there been no maps referred to, nor letters written, the use of the word "restore" in the Treaty must have precluded England from claiming more than she formerly possessed. But the words of the Treaty were to be interpreted by the lines upon the map. Where these lines were drawn it is important to ascertain with some degree of probability, if not with absolute certainty. Considering the means available to M. de Lisle, as Royal Geographer, it is highly probable that the line drawn upon his map, separating the territory about Hudson's Bay from Canada, accurately represents the extent of country which the French were willing to concede, and corresponds with the line drawn by the French upon the map referred to by Mr. Prior and the Marquis De Torey. The position of the English line, in my opinion, may be gathered from the memorial presented by the Hudson's Bay Company during the negotiation of the Treaty of Utrecht. The English Plenipotentiaries, in presenting the claims of England, seem to have made the demands asked of them by the Hudson's Bay Company. In view of the negotiations for peace at the Hague in 1709, at Gertruydenberg in 1710, and at Utrecht in 1711-12, they obtained from the Company a statement of their claims, and they seemed, so far as we have been able to find the correspondence, to have contented themselves with whatever demands the Company chose to make, and we shall see how the British authorities were, in the end, misled, and how they failed to secure any settlement by relying upon the Hudson's Bay Company.

¹ The letter in the Hardwicke Papers bears a later date, but the one date is probably old style and the other new.

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In the Memorial of 7th of February, 17¹¹/₁₂, the Company propose as a boundary between them and Canada, a line drawn from Cape Perdrix, in latitude 58° 30' north, and passing to the south-westward "to the great Lake Miskosinke, or Mistoveny, dividing the same into two parts, (as in the map now delivered.)" The Company asked in their memorial that "The French, nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever; and the English on the contrary, not to pass the said supposed line, either to the southward or eastward." These are the boundaries given by the Hudson's Bay Company during the negotiations of the Treaty, and from this description we must ascertain the extent of country claimed by the English Plenipotentiaries. No separating line is mentioned upon the south, but it is highly probable that the parallel passing through the south-western shore of Lake Mistassin was intended as such. It is clear that the eastern boundary, drawn in a southern direction through Lake Mistassin, was not extended to the southward beyond the lake which it divided. This line alone would not have served the purpose of the Company, and the prohibition which they sought relating to the fur trade, would be of little value if it had reference only to the country lying between this line and Hudson's Bay.

The rights of the Company were twofold,—the rights of property in the soil within the Straits and Bay, that is, to the lands between the line drawn and the Bay, and the right of exclusive trade within the territories to the west or south of the Bay, which their occupation might have rightfully secured to the Crown of Great Britain. The Company, as yet, hesitated to compound these separate rights and privileges. This is shown by their stopping short with their boundary at Lake Mistassin. But the note added to their memorandum affords a pretty plain hint of those bolder pretensions put forward at a later period. As yet the Company cared only for the fur trade; but they seem to have discovered that the Crown could not grant a monopoly of the fur trade, and that they could only enjoy it as an incident to ownership of the country, which would at once protect them against trespassers.

The fur trade lay mainly to the west of the Bay. What the Company wanted was the exclusive trade about the Bay and within the territory which they claimed. It was to secure this monopoly of the trade that they wished to exclude the French from navigating the Bay. They drew a separating line upon the east, and they extended it sufficiently far to the south to embrace Moose Fort. They must, then, have intended to make the parallel which passes along the southern shore of Lake Mistassin their southern boundary,—in other words, to have asked as their exclusive possession, for the purpose of trade, the Bay and its adjacent territory west of the line described. Had they believed they could successfully claim a more ample margin upon the south shore of the Bay, they would have extended their boundary line upon the east further to the south-west. They proposed to do this, as we shall see, at a later period; but it was after the Treaty of Utrecht had been signed, and when the limits were defined upon the map of the Plenipotentiaries. It must be borne in mind that the Company wanted to get rid of the settlement made by the Treaty of Ryswick. The provisions of that Treaty relating to the Hudson's Bay were permanent in their character, and not such as, by the rules of International Law, are affected by subsequent wars. The Company wanted that settlement

set aside. They desired to have secured to them all the country their charter professed to grant; and in this memorandum they undertook to describe the territory from which they wanted the French excluded. It is the first attempt to describe the limit of the country they claimed under their charter, and it is the only instance in which they did so before the peace of Utrecht. Whatever then, the Company claimed at that time, must be taken as the extreme pretension of the English prior to the Treaty. It is assumed that the Company, in this description, intended to make the parallel of latitude which starts from the point on the south-western shore of Lake Mistassin at which the eastern boundary terminates, the extreme southern limit of the British possessions; that is, the extreme limit of the territory conveyed, and also the extreme limit of the lands within which they had a monopoly of the Indian trade. This is the most favourable assumption to the Company of which their memorandum will admit. If we were to construe their memorandum strictly, and infer that they claimed under the one grant or the other only the country within the line actually described as the one from which they wished to exclude the French, their southern boundary would be a line drawn midway between west and north-west from the point on the south-west shore of Lake Mistassin. They ask that the French, or others employed by them, may not be permitted to come to the northward or north-westward of the defined line, which would only be done when they crossed the line midway between west and north-west. What the Company, in our opinion, intended as their southern boundary, in this memorandum, was a line due west from the point on the shore of Lake Mistassin at which their eastern boundary terminated. How far to the westward this line was carried it is impossible to say, but it is not likely that it was made to embrace a much larger area upon the west than was claimed upon the east. The French had, at this time, no posts west of Lake Winnipeg. They had one upon the north shore of Lake Nipigon, and still further north in the country of the Knistinaux. These posts they were not likely to surrender, nor was England likely to claim trading stations which it was out of her power to defend. Taking then, DeLisle's line, as the one drawn by the French, and drawing a line from the descriptions given in the memorandum of the Hudson's Bay Company, which will accurately represent the one drawn by the English, it may fairly be presumed that we shall have an exact copy of the map referred to by Count De Torey and by Mr. Prior, and it will be seen that these lines agree with the observation of Mr. Prior "that there is no very great difference" between them. The line from Cape Perdrix to Lake Mistassin appears as a direct one upon the map of Mr. Popple, who was Secretary to the Lords of Trade and Plantations. He was the person who received the map and memorandum of the Hudson's Bay Company, and probably copied this line from their map.

On the 27th of May, 1713, Lord Dartmouth addressed a letter to the Lords of Trade, enclosing a petition from the Hudson's Bay Company, in reference to their getting possession of the trading posts in the neighbourhood of Hudson's Bay. In his letter Lord Dartmouth, after asking the Lords of Trade to report their opinions upon the several particulars mentioned by the company in their petition, says:—"In the meantime I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any *Act of Cession* from the French King, and has, therefore, insisted only upon an *order* from that Court for deliver-

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ing possession to such persons as should be authorized by Her Majesty to take it ; *by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble.*" The King of France gave the following order for the surrender of the country :—"Order by the King of France. M. Jérémie, Commander of the Forts and Streights of Hudson's Bay, is commanded to deliver up to the Bearer of the Queen of Great Britain's order, the Bay and Streights of Hudson, together with all buildings and forts there erected, in the condition they now are, with all the cannon and cannon-ball, as also a quantity of powder (if it be there found), in proportion to the cannon-ball and the other things belonging to the artillery, according to, and in execution of the tenth Article of the Treaty of Peace concluded at Utrecht, the 11th of April last, between his Majesty's Plenipotentiaries and those of the Queen of Great Britain. Done at Marley, the sixth of August, 1713."

It may not be out of place here to pause for a moment, and consider the extent and validity of the claims of the Hudson's Bay Company at the time Lord Dartmouth undertook to protect them from the consequences of the Treaty of Ryswick, by declining to receive an *Act of Cession*, and by insisting on a simple *order of restoration*. We have seen what limits the Company gave to their territories during the negotiation of the Treaty of Utrecht. Let us briefly examine the words of the charter. The King professes to "give, grant, and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatsoever latitude they shall be, *that lie within the entrance of the straits, commonly called Hudson's Straits*, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, *that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State*, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, inlets and rivers, within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid; and that the said lands be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land; and, further, we do by these presents, for us, our heirs and successors, make, create and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties, and appurtenances whatsoever, to them the said Governor and Company, and their successors as of our manor of East Greenwich, in our County of Kent, in Free and Common Socage.

"And furthermore, We do grant unto the said Governor and Company, and their successors, that they and their successors, and their factors, servants and agents for them and on their behalf, and not otherwise, shall forever hereafter have, use and enjoy, not only the whole, entire, and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, bays,

and seas into which they shall find entrance or passage by water or land, out of the territories limits and places aforesaid, and to and with all the natives and people inhabiting within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coast adjacent to the said territories, limits and places which are not granted to any of our subjects."

The question has frequently been discussed whether the charter of the Hudson's Bay Company was not void from the beginning. If the doctrine held by some lawyers in the case of the Duke of York, that the King could make no valid grant of property of which he had not yet acquired possession, hold good, then upon this ground the grant to the Hudson's Bay Company was void, for the visits in 1667 to Hudson's Bay were by persons in their private capacity, not authorized by the Government to take possession of any country on behalf of the Crown. But supposing this question of non-acquisition passed by, could the King make a valid charter, of a country he actually held, granting such privileges?

The charter contains two distinct grants, the one conveying the soil and the monopoly of trade, and the other the monopoly of the trade only. Mr. Vicary Gibbs, afterwards Sir Vicary Gibbs, Chief Justice of the Common Pleas, says of this charter "I am of opinion that the charter in question was originally void, because it purports to confer on the Company exclusive privileges of trading, which, I think the Crown could not grant without the authority of Parliament. In Sandys against the East India Company, Skinn. 132, 165, 197, 223, the arguments used against their charter appeared all decisive upon the subject; and although both Judge Jeffreys and the other Judges of the King's Bench decided in favour of the charter, I have understood that their judgment was afterwards reversed in parliament." Lord Chancellor Campbell in his life of Jeffreys says "One of the best specimens of Jeffreys' judicial powers, is his argument in the case of the East India Company against Sandys, in which the question arose as to the validity of the charter giving to the plaintiffs the exclusive right of trading to all countries east of the Cape of Good Hope. Contrary to our notions on the subject, he insisted very elaborately and ingeniously that such a charter might be granted by the Crown so as to create a monopoly, without any confirmation by Parliament, and that the defendant, by trading within the prescribed limits, was liable to the action. Thus he concluded:—'The King by his Charter makes the plaintiffs as it were, his ambassadors to concert peace with the Indians, and Mr. Sandys has complained that he is not one of them. Because the King may pardon every offender, but will not pardon any highwaymen now in Newgate, must these gaol-birds therefore think themselves injured in their liberty and property? The Company have been at the trouble of discovering places, of erecting forts, of keeping forces, of settling factories, and of making leagues and treaties; and it would be against natural equity to wrest the benefits from them which they have thus earned. Let there be judgment for the plaintiffs.'"—10 St. Tr. p. 519; Campbell's Lives of the Chancellors Vol. IV. p. 417, 5th Ed.

Mr. Forsyth, in his Constitutional Law, observes:—"In East India Company v. Sandys, 10 State Trials, 371, 574, the grant of sole trading was held to be good; but it is difficult to believe that, even independently of the Statute of Monopolies, such a grant would be held to be good now."—p. 184.

"Charters granting an exclusive right of trade have at various

periods been granted to the Elizabeth, in 1693 the House of Commons granted to the East India Company since that period the Crown to grant has been by the

After the creation of a monopoly of the Hudson's Bay Company by Parliament. Whether any fresh renewal

In 1857, a Bill was introduced by A.G., and Sir F. B. Charter. They were administered of ownership of the Company as having

But waiving to enquire whether the King had granted could not the Straits of Hudson shows that there believed could be were to have the the opinion of the Spankie, and Mr. plain, therefore, and territories The Territorial territories to Hudson &c., that lie within the confines of the seas, and confines of might be reasonable in which the any indefinite ex territories lying miles or leagues another sea, strait situation, and far dimensions the ex

periods been granted by the Crown. Amongst these, the most notable were the charters granted to the Russia Company, by Philip and Mary; to the East India Company, by Elizabeth, in 1600; and to the Hudson's Bay Company, by Charles II., in 1670. But in 1693 the House of Commons resolved that it is the right of all Englishmen to trade to the East Indies or any part of the world, unless prohibited by Act of Parliament; and since that period there does not appear to have been any exercise of the assumed power of the Crown to grant a monopoly of foreign trade. When such a grant has been made, it has been by the authority of an Act of Parliament."—*Ibid* p. 434.

After the resolution of the House of Common, denying that the Crown had power to create a monopoly in reference to trade, without the sanction of Parliament, the Hudson's Bay Company obtained for a limited time a confirmation of their privileges by Act of Parliament. When the public vigilance ceased, they resumed their pretensions without any fresh renewal of the Act.

In 1857, a case was submitted to the Law Officers of the Crown, Sir Richard Bethell, A.G., and Sir H. S. Keatinge, S.G., on the question of the validity of the Hudson's Bay charter. They say that "with respect to any rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company as having been legally granted to them by the Crown."

But waiving the question of the validity of the charter, it is of some interest to enquire what extent of territory might be claimed under the charter, assuming the King had the power to make the grant. It is plain that the territorial grant could not be held to comprehend all that might be reached through the Straits of Hudson. The second paragraph which we have quoted, from their charter, shows that there were places and peoples outside of their territorial grant that it was believed could be reached through the straits, and in which, and with whom, the Company were to have the exclusive privilege of trade. We cannot do better than to here quote the opinion of three eminent English lawyers upon this point—Sir Arthur Pigott, Mr. Spankie, and Mr. Brougham. They say, after quoting this second paragraph, "It is plain, therefore, that the Territorial Grant was not intended to comprehend all the lands and territories that might be approached through Hudson's Straits by land or water. The Territorial Grant, then, appears to be limited by the relation and proximity of the territories to Hudson's Straits. The general description applying to the whole is the seas, &c., that lie within Hudson's Straits, and the lands, &c., upon the countries, coasts, and confines of the seas, &c., that is, *Reddenlo singula singulis*, the lands upon the countries, coasts, and confines of each of the seas, rivers, &c., naturally including such a portion of territory as might be reasonably necessary for the object in view; but it is not a grant of all the lands and territories in which the seas, straits, rivers, &c., lie, or are situated, or which surround them to any indefinite extent or distance from them. Still less is it a grant of all the lands and territories lying between the seas, straits, rivers, &c., though many hundred or thousand miles or leagues of land and territories might lie between one sea, strait, river, lake, &c., and another sea, strait, river, lake, &c., and though the quantity of land comprised in this interior situation, and far distant from any coast or confine of the specified waters, might exceed in dimensions the extent of many existing powerful Kingdoms or States. Within the Straits,

must mean such a proximity to the straits as would give the lands spoken of a sort of affinity or relation to Hudson's Straits, and not such lands as from their immense distance (in this case the nearest point to Hudson's Bay being 700 miles, and from thence extending to a distance of 1,500 miles from it)* *have no such geographical affinity or relation to the straits, but which are not even approached by the Canadians through or by the straits in question.* The whole grant contemplates the straits as the access to the lands and territories therein referred to; and, as there is no boundary specified, except by the description of the coasts and confines of the places mentioned, that is, the coasts and confines of the seas, &c., within the straits, such a boundary must be implied as is consistent with that view, and with the professed objects of a trading company intending not to found Kingdoms and establish States, but to carry on fisheries on these waters, and to trade and traffic for the acquisition of skins and peltries, and the other articles mentioned in the charter; and in such a long tract of time as nearly 150 years, now elapsed since the grant of the charter, it must now be, and must, indeed, long since have been, fully ascertained by the actual possessions of the Hudson's Bay Company, what portion or portions of lands and territories in the vicinity and on the coasts and confines of the waters mentioned and described as within the straits, that have been found necessary for their purposes and for forts, factories, towns, villages, settlements, or such other establishments in such vicinity, and on such coasts and confines as pertain and belong to a Company instituted for the purposes mentioned in their charter, and necessary, useful, or convenient to them within the prescribed limits, for the prosecution of those purposes. The enormous extension of land and territory now claimed appears, therefore, to us not to be warranted by any sound construction of the charter. . . ."

The words of the charter of the Hudson's Bay Company show that the King intended to convey to the Company, "all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds, . . . that lie within the entrance of the Straits commonly called Hudson's Straits, . . . that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State." The grant did not include:—1st. Any portion of country possessed by any other British subject, nor, 2nd, granted to any other British subject, nor 3rd, possessed by any other Christian Prince or State.

It did include, 1st, any territory in the possession of the Crown not included in the first two exceptions, and, 2nd, any territory *not in the possession of any Christian Prince or State*, to which the Crown, through the diligence of the Company, might acquire a title.

It could not include 1st, territories that were explored and occupied by the French before they were explored and occupied by the Company, although done subsequent to the grant; nor, 2nd, could it bar the French from acquiring the sovereignty over the north-western parts of America by discovery and settlements, as no territory passes by such a grant, if at all, until the sovereignty of the country is first rightfully acquired, according to the maxim *nemo dat quod non habet*.

From the letter of Lord Dartmouth it seems that he was of opinion that if the Company was authorised by the Crown to receive their former possessions from the French, their title

* They here refer to the grant made by the Hudson's Bay Company to Lord Selkirk.

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would be made good, or, at all events, as valid as it had ever been. In this he seems to have been mistaken. All the representations made by the Hudson's Bay Company, in their various petitions and memorials to the Government, proceeded upon the assumption that the war of succession, which was begun in 1702, put an end to the Treaty of Ryswick, and that the stipulations therein made by England and France were no longer binding upon either. This, however, is not the rule recognized by writers on international law. "Transitory conventions," says Wheaton, "are perpetual in their nature, so that being once carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties, and although their operation may, in some cases, be suspended during war, they revive on return of peace without any express stipulation. Such are treaties of cession, boundary, or exchange of territory, or those which created a permanent servitude in favour of one nation in the territory of another." "It is of great importance," says Vattel, "to draw a proper distinction between a new war and a breach of an existing treaty of peace, because the rights acquired by such a treaty still subsist, notwithstanding the new war, whereas they are annulled by the rupture of the treaty on which they were founded. It is true, indeed, that the party who had granted those rights, does not fail to obstruct the exercise of them during the course of the war, as far as lies in his power, and even may, by the right of arms, wholly deprive his enemy of them as well as he may wrest from him his other possessions. But in that case he withholds those rights as things taken from the enemy, who, on a new treaty of peace, may urge the restitution of them."

The war of succession had no connection whatever with the war which was ended by the Treaty of Ryswick; it was in no sense a war arising out of a breach of that Treaty. The rule laid down by Vattel is strictly applicable to the case of the possessions of the Hudson's Bay Company. The subject matter of the 7th article of the Treaty of Ryswick is of such a nature that it could not be affected by a declaration of war made five years later. The military genius of Marlborough made the war of succession adverse to France. England was enabled to make demands in reference to Hudson's Bay at its conclusion, which her successes justified, and it is upon the treaty which followed this war that her title to the sovereignty of Hudson's Bay and the adjoining country has since rested. It is equally certain that, from the signing of the Treaty of Ryswick to the ratification of that of Utrecht, it was the recognized possession of France. Being unconquered, it was, until ceded or restored to England, as much French territory as any other part of Canada.

By the 7th and 8th Articles of the Treaty of Ryswick, already quoted, all places taken by the French from the Hudson's Bay Company during the peace that preceded the war which was terminated by that treaty, became the property of the French. It would appear that these stipulations of that treaty extinguished whatever rights the Company may have had in the country that then was left a possession of France, and that they were not revived by a retrocession of the country to Great Britain by the Treaty of Utrecht, and could not be revived unless by a new grant.

As a general rule, when a Government comes into possession of property which belonged to its subjects, and which had been captured by an enemy, it restores the property to the original owners—so far as it can, it puts them upon the same footing as that in which they stood before the capture. It is, too, the rule and the practice for the conqueror to respect the right to private property in the soil, when a country is conquered.

But both these rules operate within clearly defined and well understood limits. "Where a territory," says Halleck, "has been acquired by conquest, and confirmed to the conqueror by a Treaty of Peace, the right or title of the new sovereign is not that of the original possessor, and therefore is not subject to the same limitation or restriction. It originated in force, and dates back to the conquest. A subsequent restoration of such territory to its former sovereign is regarded in law as a retrocession, and carries with it no right of postliminy. When the inhabitants of such conquered territory become a part of a new state, they must bear the consequence of the transfer of their allegiance to a new sovereign; he is, in turn, to be regarded as a conqueror, and they cannot claim, as against him, any rights of postliminy. The correctness of this principle of international law is never disputed."*

Vattel lays down the same doctrine. He says:—"Provinces, towns and lands which the enemy restores by the Treaty of Peace are certainly entitled to the right of postliminium, for the sovereign, in whatever manner he recovers them, is bound to restore them to their former condition as soon as he regains possession of them. The enemy, in giving back the town at the peace, renounces the right he had acquired by arms. It is just the same as if he had never taken it, and the transaction furnishes no reason which can justify the sovereign in refusing to reinstate such town in the possession of all her rights, and restore her to her former condition. *But whatever is ceded to the enemy by a Treaty of Peace, is truly and completely alienated. It has no longer any claim to the right of postliminium unless the Treaty of Peace be broken and cancelled.*"†

The doctrine of Vattel here might seem to a careless reader to differ from that of Halleck. But it does not. The places entitled to postliminium are places recaptured or restored during or at the close of the war in which they were taken. The restoration of which Vattel speaks, is not a retrocession of territory, the title to which had already been vested in the conqueror by mutual agreement, but the restoration of the territory at the peace immediately following the war in which the conquest, or capture, was made; and, in that event, the hostile possession is regarded rather as a belligerent occupation than a conquest. "Conquest does not, *per se*, give to the conqueror *plenum dominium et utile*, but a temporary right of possession and government."‡

"A long possession," says Burlamaqui, "accompanied with an equitable government, may legitimate a conquest in its beginning and principle the most unjust. There are modern civilians who explain the thing somewhat differently.

"These maintain that in a just war the victor acquires the full right of sovereignty over the vanquished, by the single title of conquest, independently of any convention; and even though the victor has otherwise obtained all the satisfaction and indemnification he could require.

"The principal argument these writers make use of is, that otherwise the conqueror could not be certain of the peaceable possession of what he has taken or forced the conquered to give him for his just pretensions, since they might retake it from him by the same right of war.

* Halleck's International Law, chapter 35, sec. 9.

† Vattel's Law of Nations, Bk. 3, secs. 214-215.

‡ 2 Dallin, Sup. C. Rep., 486.

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"But this reason proves only, that the conqueror who has taken possession of an enemy's country, may command it while he holds it, and not resign it until he has good security that he shall obtain or possess, without hazard, what is necessary for the satisfaction and indemnity which he has a right to exact by force. But the end of a just war does not always demand that the conqueror should acquire an absolute and perpetual right of sovereignty over the conquered. It is only a favourable occasion of obtaining it; and for that purpose there must always be an express or tacit consent of the vanquished. Otherwise the state of war is still subsisting, the sovereignty of the conqueror has no other title than that of force, and lasts no longer than the vanquished are unable to throw off the yoke."*

In the case of the Colony of Pemaquid, the principle of postliminy was pressed to its extreme limit, yet there was nothing in that case which would warrant its application to the case of the Hudson's Bay Company after the Treaty of Utrecht. The Colony of Pemaquid was conquered by D'Iberville in 1689. It was to be restored to the English by the Treaty of Ryswick, but they did not obtain possession, it seems, before the war of 1702. It was reconquered by General Nicholson, and the law officers of the Crown (P. Yorke and C. Talbot), August 11, 1731, were consulted as to whether the right to the lands was in the crown, or whether the charter granted before the conquest, was still in force. They answered: "As to the question stated in the case, upon the effect of the conquest of this tract of country by the French, and the reconquest thereof by General Nicholson, we conceive that the said tract, not having been yielded by the Crown of England to France by any treaty, the conquest thereof by the French created, according to the law of nations, only a suspension of the property of the former owners, and not an extinguishment of it; and that upon the reconquest by General Nicholson, all the ancient right, both of the Province and of private persons subjects of the Crown of Great Britain, did revive, and were restored *jure postliminii*. The rule holds the more strongly, in the present case, in regard it appears by the affidavits that the Provinces joined their forces to those which came thither under the command of General Nicholson in the service."†

Here the agreement to restore the country at the close of the war in which it had been taken, kept alive the right of postliminy; and the facts that the French did not at once restore it, and that the English forcibly took what the Treaty promised, could not extinguish the rights of the people to their former possessions.

The Hudson's Bay Company were not simply private owners of a very extensive estate. They were professedly endowed by their charter with political and governmental powers. They built forts and armed them. Their valuable property in the vicinity of Hudson's Bay, was such as belongs to a State rather than to a private citizen. Had their forts and ports been recaptured during the war preceding the Treaty of Ryswick, and left to the English by the Treaty, it would have been the duty of the Government to have placed the Company in the position in which they stood before the capture. Or, had the Treaty of Ryswick, recognised their title by promising restoration, even though restoration

* Buriamaqui's Politic Law, pt. 4, ch. 3, sec. 8, 9, and 10.

† Forryth's Constitutional Opinion.

did not take place until after the Treaty of Utrecht, the title of the Company would have remained, and they would have stood in the same position they were in before their forts were captured. But the case is wholly different where the rights of the original owners have been once extinguished. The Hudson's Bay Company were not recognised by France as private proprietors of the soil, whose ownership was not effected by a change of sovereignty. They were regarded as a great public corporation, possessing, in some degree the attribute of Government, and acting on behalf of the Government which gave them a corporate existence. This may be fairly taken as the common public law of the European States that were seeking to establish their authority upon the Western Continent. Their conduct and policy during the seventeenth and eighteenth centuries, show conclusively that companies such as the Hudson's Bay Company, were looked upon as great political corporations, whose rights and franchises were created mainly to extend the power and authority of the sovereign who chartered them, and that they had therefore no rights, as private owners which a foreign State was in case of conquest bound to respect. They were looked upon as custodians of political authority rather than as ordinary subjects or citizens, and were dealt with accordingly. It was in this way that the English dealt with the Quebec Company, and the Treaty of Utrecht recognises the principle in express terms. The India Company of Holland were not recognised as having any rights in the New Netherlands after the conquest by James.

The case of the Duke of York, under the charters granted to him by his brother Charles II., well illustrates the limitation of the principle of postliminium. On the 12th March, 1664, O. S., the King granted by Royal Patent, to his brother James, Duke of York and Albany, all the lands and rivers from the west side of the Conneticut River to the east side of Delaware Bay. His patent also embraced Long Island and the islands in the neighbourhood. A patent to Long Island had been granted to Lord Stirling; but he had released his title before the grant was made to James. James's patent conveyed a part of the Province of Conneticut and the whole of the New Netherlands. He was at the time Lord High Admiral. He took four ships-of-war to give effect to the grant made to him by the King, and to put himself in possession of his new estate.*

This fleet was put under the command of Colonel Nicolls, who had associated with him, Sir R. Carr, Colonel Geo. Carteret, and Samuel Moverick, who were required to assist in the conquest of the country granted to the Duke. On the 20th of October, N. S., the conquest of New Netherlands was completed, and James entered into possession. Three years later, the sovereignty of the country was confirmed to England by the Treaty of Breda. In 1673, war again broke out between England and the Netherlands, and the Province of New Yorke (formerly New Netherlands) was re-conquered by the Dutch. By the sixth Article of the Treaty of Westminster, which was ratified on the 19th of February, 1674, N. S., the United Provinces relinquished their conquest to the King of England. It was claimed that James's former proprietorship revived by the restoration of the Province to the King of England, especially as the Treaty of Westminster had re-established the articles of capitulation between Nicolls and Stuveysant, in 1664. The Treaty of Breda confirmed the conquest to England, upon the principle of *uti possidetis*. There were

* For a full account, see Brodhead's History of New York, Vol. 2, Chapters 1, 2, 5, 6, and 7.

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two grounds upon which the validity of the charter was questioned by eminent lawyers—the one, that the country was in the possession of the Dutch when the patent was made; the other, that the conquest of the Dutch in 1673, extinguished the title of the Duke if good before. The opinion of counsel having been taken, they advised that “the Duke’s rights had been extinguished by the Dutch conquest, and that the King alone was now seized of New Netherlands, by virtue of the Treaty of Westminster. The *jus postliminii* did not obtain where there had been a complete change of sovereignty.”* A new patent was accordingly issued on the 29th June, 1674. This was certainly a much weaker case than that of the Hudson’s Bay Company, and if it could be held in this case that there was a complete extinguishment of the sovereignty of England in consequence of the re-conquest of the Dutch, much more must there have been an extinguishment of the rights of the Hudson’s Bay Company when the possession of the French was confirmed by the Treaty of Ryswick. It may not be always easy to say whether there has been a suspension or an extinguishment of a right by conquest and restoration. The principle recognized in the case of the Duke of York seems to have been this—that where there has not only been belligerent occupation, but the establishment of civil government in which the people have voluntarily acquiesced, there is in law as well as in fact, a change of sovereignty, even though there has been no convention between the belligerents sanctioning the change. But there can be no doubt that the right of postliminy never obtains where a recognized change of sovereignty has intervened between the conquest and the restoration, and this is precisely what happened to the Hudson’s Bay territory between the capture of the various posts by the French, and the restoration of the country to the English under the Treaty of Utrecht.

It is worthy of note that the Duke of York, upon the authority of his first Patent, conveyed that portion of his grant lying between Hudson and Delaware Rivers to Lord Berkeley and Sir George Carteret, and which was named New Jersey, as a compliment to Sir George, who had been Governor of the Island of Jersey during the Civil War, and who held it for Charles I. Berkeley sold his rights to Edward Billinge. Billinge, who was greatly in debt, consented to sell his part for the benefit of his creditors, and William Penn, Gawen Lawrie and Nicholas Lucas were appointed trustees for the purpose. In 1676 they divided the territory with Sir George Carteret, he taking the eastern, and they the western portion. This country fell into the hands of the Dutch at the time they retook New York, and it was, by the Treaty of Westminster, restored to England, but the titles of the settlers, which were derived through the Duke of York from the first patent granted by the King were never questioned. Unlike that of James they were unaffected by the conquest.

Whatever then may be thought of the intentions of Lords Bolingbroke and Dartmouth towards the Hudson’s Bay Company, there is but little room for doubt that the Treaty of Ryswick extinguished the claims of the Company to every part of the coast of which they had lost possession during the peace which preceded the war, and that without a new grant from the Crown they could have no property in the soil.

On June 1st, 1713, the Hudson’s Bay Company addressed to Her Majesty, Queen Anne, the following petition:—

* Quoted by Brodhead, *Hist. of New York*, Vol. 2.

"The humble petition of the Governor and Company of Adventurers of England, trading into Hudson's Bay,

"SHEWETH:

"That your petitioners being informed that the Act of Cession is come over, whereby (among other matters thereby concerted) the French King obliges himself to restore to your Majesty (or to whom your Majesty shall appoint to take possession thereof) the Bay and Streights of Hudson, together with all the lands, seas, sea-coasts, rivers and places situated in the said Bay and Streights, as also all forts and edifices whatever, entire and not demolished, together with guns, shot, powder and other warlike provisions (as mentioned in the 10th Article of the present Treaty of Peace), within six months after the ratification thereof, or sooner, if possible it may be done.

"Your petitioners do most humbly pray your Majesty will be graciously pleased to direct the said Act of Cession may be transmitted to your petitioners, as also your Majesty's commission to Captain James Knight and Mr. Henry Kelsey, gentleman, to authorize them, or either of them, to take possession of the premises above mentioned, and to constitute Captain James Knight to be Governor of the Fortress called Port Nelson, and all other forts and edifices, lands, seas, rivers and places aforesaid, and the better to enable your petitioners to recover the same, they humbly pray your Majesty to give orders that they may have a small Man-of-war to depart with their ship, by the 12th day of June next ensuing, which ship may, in all probability, return in the month of October. And your petitioners, as in duty bound, shall ever pray.

"By Order of the Company.

"Per WM. POTTER,

"Secretary."

On the 14th of April, 1714, the Company addressed a memorial to the Queen, in which they say "that the said Company do, with the utmost gratitude, return your Majesty their most humble and hearty thanks for the great care your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay of Hudson and Streight, being the undoubted right of the Crown of Great Britain." They also inform Her Majesty that, as by the Treaty satisfaction is to be made to them for the damages done by the French, they would be prepared to make out their demand for injuries sustained whenever Commissaries are appointed for the purpose of deciding the question of damages, under the Eleventh Article of the Treaty. Shortly after, the Governor and Company addressed to the Lords Commissioners of Trade and Plantations a memorandum in reference to the limits which "they desired to have fixed between them and the places appertaining to the French." And in this paper we have the beginning of those growing pretensions which, on every fresh occasion, were enlarged until a considerable portion of Upper Canada was claimed as being within the grant made to the Company by Charles II. The memorandum reads as follows:—

"The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay.

SHEWETH:—

"That pursuant to the 10th Article of the Treaty of Utrecht, they did, the beginning of June last, send a ship for Hudson's Bay, and therein a Governor, one Captain Knight,

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and his deputy, one Mr. Kelsey, to take possession of the whole Bay and Streights of Hudson, together with all other places relating thereto, as mentioned in the said articles, they having not only her late Majesty (of blessed memory), her commission for the same purpose, together with one from the Company, but likewise the Most Christian King's order, under his hand and seal, with a power from the Canada Company, to deliver up the same according to the said Treaty; which ship, at the request of the said Canada Company, is not only to bring away the French settled in Hudson's Bay, but likewise their effects, pursuant to the aforesaid Treaty, they paying freight for the same, which ship may be expected the latter end of September or beginning of October next.

"They further represent to your Lordships, that, according to a memorial formerly delivered this honourable board, relating to the limits or boundaries to be settled by Commissioners 'twixt the English and French in those parts, they humbly prayed, that for avoiding all disputes and differences that may in time arise between the Company and the French settled in Canada, that no wood-runners, either French or Indians, or any other person whatsoever, be permitted to travel or seek for trade beyond the limits thereafter mentioned.

"That the said limits beginning from the Island called Grimington Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}$ north, may be the boundary between the English and the French, on the coast of Labrador, towards Rupert's Land, on the east main, and Nova Brunswick on the French side.

"That no French ship, barque, boat or vessel, whatsoever, shall pass to the north-westward of Cape Perdrix, or Grimington's Island, towards or into the Streights or Bay of Hudson on any pretence whatsoever.

"That a line, supposed to pass to the south-westward from the said Island of Grimington, or Cape Perdrix, to the great Lake Mischosinke, or Mistoveny, dividing the same into two parts (as in the map now delivered), and from the said lake, a line to run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit, that the French do not come to the north of it, nor the English to the south of it.

"That the French nor any others employed by them shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes or countries, to trade, or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line, either to the southward or eastward.

"The said Company having already delivered to your Lordships an abstract of the damages sustained by the French in times of peace, amounting to £100,543 13s. 9d., according to the direction of the 11th Article of the aforesaid Treaty, which they humbly entreat your Lordships to take care of, to the relief of the great hardships they have so long laboured under.

"By order of the Governor and Company of Adventurers of England trading into Hudson's Bay.

"WM. POTTER,

"Secretary.

"Hudson's Bay House, 4th August, 1714."

It will be seen that this description of the limits which the Company desires differs in some important particulars from that which had been given during the negotiations of

the Treaty of Utrecht. In the memorandum of February, 17¹¹/₁₂, the description of the eastern boundary terminates upon the south-west shore of Lake Mistassin. In this, there are added the words "and from the said lake a line to run south-westward into 4⁰ degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit." It was impossible, however, that the Company could make greater demands upon the French after the ratification of the Treaty, than the Government had on behalf of the Crown and the Company made during the progress of the negotiations. The only effect of the policy of aggression upon which the Company now entered was to prevent a proper settlement of the limitary line, by misleading the English Government, and by causing it to make demands upon the French wholly inconsistent with the understanding at which they had previously arrived.

Nearly six years had elapsed between the ratification of the Treaty of Utrecht and the appointment of Commissioners to settle the boundaries between the British and French Colonies, under the Tenth Article of that Treaty. In August, 1719, the Governor and Company addressed the Lords of Trade and Plantations a memorial in which they say:—"That by the Treaty concluded at Utrecht it was agreed between the Crowns of Great Britain and France that the Streights and Bay of Hudson should be delivered up to the British subjects, and that the limits should be settled between the said Bay of Hudson and the places appertaining to the French, and also that satisfaction should be given to the Company for all depredations committed against them by the French in a time of peace, according to an estimate thereof to be made at the requisition of the several parties. The first of these Articles, namely, the surrender of the Streights and Bay aforesaid, has been made according to the tenor of the Treaty, at least in such a manner that the Company acquiesced therein, and have nothing to object or desire on that head.

"The other two, viz., the running a line between the English and French territories, and the making reparation to the Company for their losses and damages, yet remain to be done. Whereupon the Governor and Company most humbly represent to your Lordships that they conceive it absolutely necessary that the limits between the two nations be settled without delay, for that the French have, since the conclusion of peace, (viz., in 1715), made a settlement at the head of Albany River, upon which very river our principal factory is settled, whereby they interrupt the Indian trade from coming to the Company's factories, and will in time utterly ruin the trade, if not prevented; it is therefore proposed and desired that a *boundary or dividing line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude 49°*, except on the coast of Labrador; unless this be done the Company's factories at the bottom of Hudson's Bay cannot be secure or their trade preserved. By order of the Governor, &c.

"WILLIAM POTTER,
"Secretary."

It seems from the memorandum attached to this paper, that the original was taken by Colonel Bladen to France, in September, 1719, when he, along with Mr. Pulteney, went as English Commissioners to Paris.

The instructions were given in September, 1719, to the British Commissioners, Pul-

teney and Bladen. Article of the Treaty of Utrecht, French, be a French subject sea or land-ner, that is C [Cordrix] in between the on the East a line be drawn as to include veny, dividing that where to begin and be said lines the to the north as shall be agreed that the said that his Majest within the said

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teney and Blader, and contain the following directions:—"It being provided by the 10th Article of the Treaty of Utrecht, that the limits and boundaries appertaining to the French, be settled by Commissaries on each part, which limits both the British and French subjects, shall be wholly forbid to pass over or thereby to go to each other by sea or land—You are to endeavour to get the said limits settled in the following manner, that is to say, that the same begin from the Island [of Grimington] or Cape Pedrix [Gardrix] in the latitude $58\frac{1}{2}$ north, which the Company desire may be the boundary between the British and French subjects on the coast of Labrador towards Rupert's Land on the East Main, and Nova Britannia on the French side, . . . and further, that a line be drawn from the South-westward of the Island of Grimington or Cape Pedrix (so as to include the same in the limits of the Bay) to the Great Lake Mistossink, alias Mistoveny, dividing the said lake into two parts (as in the map to be delivered to you), and that where the said line shall cut the 49th degree of north latitude, another line shall begin and be extended westward upon the 49th degree of northern latitude, over which said lines the French and all persons by them employed shall be prohibited from passing to the north or north-west, &c. *But you are to take especial care in wording such Article as shall be agreed upon with the Commissioners of his most Christian Majesty, upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only, that his Majesty does not thereby recede from his right to any lands in America not comprised within the said boundaries.*"*

These instructions serve to establish, what has been already stated, that the British Government claimed for the Hudson's Bay Company whatever they demanded. The government, in the main, relying upon the trade and settlements of the Company as the basis of their pretensions to the sovereignty of Hudson's Bay and the surrounding country, trusted to the Company for the facts by which that claim was to be made good. They did little more than speak and act for the Company, as they were the only portion of the British population who had any direct interest in the matter. It cannot for a moment be doubted, that the line which the English Plenipotentiaries drew upon the map as the extreme limit of their pretensions, did not extend farther south than the south-western shore of Lake Mistassin, that is, as far south as the 51st parallel of north latitude. It is not at all improbable that the British Government, when they put forth the extreme claims of the Hudson's Bay Company, were ignorant of the restrictions placed upon the construction of the 10th Article of the Treaty of Utrecht, and therefore upon their claims of dominion over the basin of Hudson's Bay, by lines drawn upon the map by the Plenipotentiaries, which were intended to facilitate the settlement of the disputed boundary, and to prevent those extreme demands by the British Government, of which the Company, so soon after the Treaty of Utrecht, became the unscrupulous instigators. To suppose the British Government acquainted with the facts which have been here narrated, is to suppose them guilty of bad faith. Lord Bolingbroke had been driven into banishment. Harley, and the men who had come into power upon the fall of Marlborough, were displaced, and it is not at all improbable that the Ministers who determined the character of the instructions given to Messrs. Pulteney and Bladen, were ignorant of the construction which had

* Obtained from Chief Justice Draper.

been given to this Article of the Treaty, by the lines drawn upon the map by the Plenipotentiaries of the two Governments, as shown by the letters of the Marquis de Torcy and Mr. Prior. When Commissioners were appointed in 1750 to settle the various disputes relating to the boundaries between the possessions of England and France in America, the Hudson's Bay Company again addressed a memorial to the Lords of Trade and Plantations, relating to the extent of country which they claimed under their charter. It is dated 3rd of October, 1750, and reads as follows:—

"The said Governor and Company, in obedience to your Lordships orders of the 25th July, last, requiring them to lay before your Lordships an account of the limits and boundaries of the territory granted to them, represent to your Lordships :

* * * * *

"The said Straights and Bay, commonly called Hudson's Straights and Bay, are now so well known that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered to your Lordships; and the limits or boundaries of the lands and countries lying round the same, comprised as your memorialists conceive in the said grant, are as follows, that is to say : All the land lying on the east side or coast of the said bay, and extending from the bay eastward to the Atlantic Ocean and Davis Straights, and the line hereinafter mentioned as the east and south-eastward boundaries of the said Company's territories ; and toward the north all the lands that lie at the north end, or on the north side or coast of the said bay, and extending from the bay northwards to the utmost limits of the lands, then towards the north Pole, but where or how those lands terminate is hitherto unknown ; and towards the west, all the lands that lie upon the west side or coast of the said bay, and extending from the bay westward to the utmost limits of those lands, but where or how those lands terminate to the westward is also unknown, though, probably, it will be found that they terminate on the Great South Sea ; and towards the south, all the lands that lie at the south end or south side or coast of the said bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line to be drawn for the purpose, to begin from the Atlantic Ocean on the east side of an island called Grimington's Island, otherwise Cape Perdrix, in the latitude of $58\frac{1}{2}^{\circ}$ on the Labrador coast, and to be drawn from thence south-westward to the great lake Micosinke otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49th degree of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49° westwards."

The memorial complains of the French encroachments before the Treaty of Utrecht, and sets out the Tenth Article of that Treaty thus : "That the French King should restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Straights of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the said Bay and Straight, and which belong thereunto, no tracts of land or sea being excepted which were possessed by the subjects of France, &c., &c."

Also the Eleventh Article, and proceeds—

"That in pursuance of the said Treaty, and the especial commission of Her late Majesty, Queen Anne, dated 20th July, 1713, the said bay and lands were delivered up to, &c., and commissaries were appointed to settle the said limits and adjust the dam-

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ages, &c., and proceedings were had by the said commissaries towards settling the same, but they were never able to bring the settlement of the said limits to a final conclusion," &c.

"The boundary line then proposed by the H. B. Co., to be settled on the limits on the continent between them and the places belonging to the French at the south end of the said Bay, as appears from the several memorials and a map or a plan then presented by the said H. B. Co. to the Lords Commissioners of Trade, and still remaining in your Lordships' office, was the same as the line now proposed by your memorialists for the south-east and south boundaries; and to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries, which be nearest the settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretensions to, and at the same time leave your memorialists *but a very small district of land from the south end of the said Bay, necessary for a frontier.*"

It next refers to former memorials setting forth the national rights, and claims that—
 "Since the Treaty of Utrecht the French and all the other nations have effectually been kept out of Hudson's Bay and Streights, and have never offered to come into or navigate on the same with any ship, vessel, or boat, or carried on any trade there. But the French, since the said treaty, as has been reported to your memorialists from their factories in the bay, have at different times made some settlements in different parts inland to the west of said bay, *within the aforesaid limits of the H. B. Co.*, and have also carried on some trade within the said company's limits by means of wood-runners in an interloping way, both which are conceived and humbly represented to your Lordships as encroachments on the British territories or trade.

"That your memorialists have used the best endeavours in their power to prevent the French making any encroachments on the British territory in those parts, and particularly at the south end of the said bay, where, by the neighbourhood of the French, there is most to be apprehended. Your memorialists have made a settlement many years since upon the principal river there, called Moose River, which runs from a great distance south into the bay, and have also erected a fort mounted with cannon for the defence of the settlement, and preventing the French entering the bay by any navigation down that river; and your memorialists, on another principal river, called Albany River, that likewise falls into the bay towards the southward thereof, and comes a great way from the west, erected another fort called Henley, at the distance of 120 miles up that river, your memorialists thereby endeavouring to guard their territories both to the south and west against the French frontier, and which forts and settlements of your memorialists, are maintained and supported by them at considerable expense. And your memorialists have, in like manner, for their further defence towards the west, erected a fort at Flamboro', head of Port Nelson River, and have also several other settlements or forts at the entrance of the principal rivers that come into the bay from the west, particularly on Churchill River, Hays River, and the said Albany River, and also on the east side of the bay at Sluide River and Axtinepeck Bay, and have also several ships and vessels navigating the straits and bay at proper seasons, some of which remain there the whole year; and the natives all around the bay, by means of the rivers that fall into the same, on breaking up of the ice come down in canoes from the country several hundred miles

inland to trade with the Company, bringing with them large quantities of beavers and other furs, the produce of that cold climate, and taking in exchange British manufactures, which the Company have always ready to supply them with, and which the Indians carry back with them for their own consumption and use, and to dispose of among other natives there, and which it is apprehended is better performed by them than could be done by Europeans, and the rivers that run into the bay admit of no navigation for ships, or any vessel of burden at any considerable distance up the same, and the climate round the bay is so extremely cold as to admit of no agriculture, the Indians of those parts being altogether a wandering people, and wholly subsisting themselves by hunting, living on the wild beasts they kill, and bartering their furs.

"That your memorialists apprehend it will be for the benefit of this kingdom that the limits of the territories granted to your memorialists, and the places appertaining to the French, should be settled upon the footing hereinbefore mentioned, and that the French should be obliged to remove all encroachments they have made within the said limits, by breaking up their settlements, and restraining the wood-runners from entering the same, &c., &c., &c.

"Under the seal of the Company,

"CHARLES HAYS, Secretary."*

It will be seen from this memorial, how much the knowledge of the geography of the country about Hudson's Bay, had improved since the French had withdrawn from the Bay. Not less noticeable is the immense extent of additional territory claimed after the lapse of thirty-six years. They made no distinction between the countries granted and those in which their charter professedly gave them no property in the soil, and only an exclusive privilege of trading with the Indians. Every memorial and petition presented by the Company subsequent to the ratification of the Treaty of Utrecht, makes clear the comparatively modern date of the claim to any territory far away from the shores of the Bay. Nothing can well be plainer than this fact, that the Company for three-quarters of a century confined their demands (embracing both their territorial rights, and their exclusive right of trade), to the Straits and Bay of Hudson.

It will be seen, from the events here narrated, that the French efforts at continuous possession of the shores of the Bay, date from 1656, and the English occupation began eleven years later. The French, holding as they did the interior country, carried on the fur trade with the Northern Indians at Temiscaming and other posts, and did not make in the beginning any effort to establish themselves upon the shores of the Bay, although they did endeavor to explore and possess the country. The letters of many of the Governors and Intendants show, that they could better protect the revenue and prevent lawless trading, by making the St. Lawrence the exclusive channel for the French fur trade; and they did not favor trade establishments upon the Bay as long as it could well be avoided.

There is no evidence that Hudson, or any of those who succeeded him, was commissioned to take possession of the country about Hudson's Bay, on behalf of the Crown of England. Nor is there any evidence that the English had any intention of seeking to acquire the territory before the expedition of Gilham in 1667, nor was

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there any official action until the Hudson's Bay Company were chartered in May, 1670. If the British Government had had, prior to that time, any intention of basing a claim to the sovereignty of the country upon the voyages of Hudson, Fox, or Button, there would have been some mention made of it during the negotiation of the Treaty of St. Germain-en-Laye in 1632, when Canada was restored to France, and the successes of Kirke were thrown away. But there was no limitation of the boundaries of Canada upon the north. There was no reservation or mention of any British possession north of Canada; there was no claim put forward to the sovereignty of any country in the vicinity of Hudson's Bay, as there undoubtedly would have been had there been any intention to claim such. The French had claimed the country indefinitely northward to the Frozen Sea. This must have been known to the English authorities at the time, and these facts and considerations make it pretty clear, that before the voyage of Gilham, the English did not purpose putting forward any claim to the country about Hudson's Bay.

It is not, however, necessary to determine the merits of the respective claims of England and France apart from treaty stipulations, in order to arrive at a just conclusion as to the proper location of the Northern Boundary of the Province of Ontario. An historical statement is only useful in throwing light upon the various treaties between the respective parties and enabling the arbitrators all the more clearly to understand what those treaties really were intended to mean. The Treaty of Utrecht yielded up to England the shores of Hudson's Bay, and it has been already shown where the separating lines were drawn by the Plenipotentiaries of England and France, subject to the future action of Commissioners who were to find a boundary within these limits. This they failed to do, because the English were misled by an importunate, and unscrupulous, though influential Company. We now purpose to state facts and principles which will enable the Arbitrators to locate this line as required by the Tenth Article of the Treaty of Utrecht.

During the negotiation of the Treaty, animated discussions seem to have taken place between the Plenipotentiaries of the two countries as to the phraseology of the Treaty. The French, in surrendering the Bay and the adjacent country, wanted to use the word *cede* and the English insisted upon the use of the word *restore*.¹ The French were unwilling to admit that when they captured the forts which had been erected by the Hudson's Bay Company, in time of profound peace between the two countries, they had been capturing forts which were rightfully erected by British subjects upon British territory. They unquestionably believed themselves to be the rightful possessors of the country. They regarded the English Adventurers as foreign intruders and trespassers upon their dominions, and they were unwilling

¹ Extract, Marquis de Torcy to Lord Bolingbroke, December 29th, 1712: "In the name of God, Sir, order your Plenipotentiaries to be less excellent grammarians. Ours, who also understand the force of Latin expressions, are out of patience when they see difficulties, which have been long adjusted, started again, and the difference between *cession* and *restitution*, and the meaning of those terms. In truth, Sir, such questions ought not to be the amusement of honourable men. They are at best excusable to those to whom we may apply *amantium ira*. Finish these disputes, which, if they continue longer, will only profit our enemies."

Extract, Lord Bolingbroke to Marquis de Torcy, 7th of January, O. S. 1713: "There are certain things which derive their consequence purely from being disputed; the difference between the expressions *cedendis* and *restituendis*, between *assumpsit* and *usumpit* or *arrogavit* is not very essential; the mind was, however, not a little heated to the dispute, and it required some trouble to convince certain people that the matter was not worthy of attention."

to admit that they had been marauders when they crossed to Hudson's Bay to expel the English from the Northern Frontier of Canada. But the English were firm in a demand which could be of no service to the Government, but which was believed to be of great service to the Hudson's Bay Company. It seems that the word *restore* was insisted upon to revive, if possible, the rights of the Hudson's Bay Company, and restore the rights of postliminy which had been destroyed by the Treaty of Ryswick. We have already shown that a right which had been absolutely extinguished, and followed by a peace for five years, could not be revived by a device of this kind. The letter of Lord Dartmouth, already quoted, shows that this was the design in using the word *restore*. An act of cession was to be avoided,—an order of restoration was to be obtained,—the transfer was to be made directly by France to the Company, and not to the Government,—the same persons from whom the property was taken, were to receive it back; so that, to use the words of Lord Dartmouth, "by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."

From the ratification of the Treaty of Utrecht in 1713, to the ratification of that of Paris in 1763,—a half a century later—the Hudson's Bay Company did nothing to explore the country, and but little to extend their trade. In 1718 or 1721* the Company rebuilt Fort Prince of Wales upon the Churchill River. In 1730, they built one fort upon the Moose River and, it is said, another small one upon East Main. In 1744 they built Henley House, 150 miles up the Albany River, so as to have the trade in a larger degree with the French, who had, twenty-seven years before, built Fort St. Germain on the north bank of the Albany, directly opposite to Henly House, and these were the utmost limits of the country occupied during the first century of their existence. It is as certain as anything well can be, that the charter of the Hudson's Bay Company was not intended to confer a title to a country already possessed by the Crown. It was, as it professes to be—and as many earlier charters, both English and French were—a Commission from the King to make discoveries, and to extend his dominion. The King could not convey what he did not have. Great doubt was expressed in the Duke of York's case, as to whether a grant from the Crown could be made valid by the subsequent acquisition of the country by the King. It was, no doubt, held by the legal advisers of Charles II. that it could, where the rights of another Christian Prince or State did not intervene. But for a century, neither by discovery nor by possession could the Hudson's Bay Company set up any valid claim to the interior of the country. If we admit the grant made by the charter to have been valid; if we admit that they were entitled to hold all the country they explored up to the cession of Canada in 1763, they would not hold a foot of territory outside of the line drawn by the French Plenipotentiaries in 1713. After the Treaty of Utrecht had been ratified, and the French had given up possession of the posts upon the shores of Hudson's Bay, and after the Company had declared that they were satisfied with what had been done, the French continued to hold the posts of Temiscamie and Abbitibi until Canada was ceded to Great Britain. Neither the English Government nor the Hudson's Bay Company complained of the existence of this last post, although it was

* Mr. Hearne, who was in the Company's employ, says 1721. He is probably correct.

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situate at a considerable distance north of the height of land, and upon a river which flows to Hudson's Bay.¹

It has been shown in the statement made in reference to the explorations of the North-West, that after the French had surrendered the Bay and Straits of Hudson, by the Treaty of Utrecht, they pushed forward with all the more energy, their occupation of the interior. They explored and took possession of the regions about the Upper Missouri, the Red River of the North, and the Saskatchewan. They had built, as we have seen, a trading post north of Lake Nipegon on the River Maune, and one upon the Upper Albany, as early as 1684. They built Fort Abbitibi in 1686, and in 1749 they built Fort Bourbon at the mouth of the Saskatchewan River. They occupied them as long as Canada remained a French possession. They may be regarded as posts within the northern frontier of Canada. They carry the boundary of Canada very far north of the watershed of the St. Lawrence, and the facts stated must leave but little doubt to whom the country rightfully belongs. Upon what recognized principle of public law can the country at any distance from the Bay be claimed as a possession of England and the Hudson's Bay Company? The Bay and the adjoining country was surrendered at the Treaty of Utrecht. But how could the surrender of Moose Fort give the English a claim to the height of land, any more than retaining Forts Abbitibi and St. Germain, would give the French a claim to

¹ The Fort Abbitibi was established in the year 1686 by the party sent under the Chevalier de Troyes in order to retake the fort built by the French on the River Ste. Thérèse, and to expel the English. "Seventy Canadians," says Ferland "had been selected to form part of the expedition, and they were to be commanded by the Sieurs d'Iberville, de Sainte Hélène and de Marincourt, all sons of Charles Le Moine. Thirty soldiers were added to them, and they were under the command of MM. de Troyes, Duchesnil and Catalogue. Father Sylvie accompanied them, trusting to be useful not only to the French but also to the Christianaux, and other northern tribes. The rivers were frozen, and the earth was covered with snow when that small party of vigorous men left Montreal in order to ascend the Ottawa River as far as the height of land, and, thence, to go down to St. James' Bay. . . . They arrived in the beginning of April at the Long Sault, where they prepared some canoes in order to go up the Ottawa River; from Lake Temiscamingue they went through small rivers, and after having passed many portages they reached the great Lake Abbitibi, near the entrance of which they built a small fort of stockades, where they left three Canadians; they continued then, their course towards St. James' Bay." *Histoire du Canada*, Vol. II. p. 161. This post is also laid down on De Lisle's Map of 1703.

In 1698, la Compagnie du Nord asked leave "to continue to manage the dependencies of that part of the Bay of the North which comprises the Abithys and Nemisko posts, specified and included in the letters patent granted by his Majesty to the said Company on the 20th of May 1695." *Archives de Paris 2de Serie*, vol. 8, p. 272.

M. Begon, in a Memorial dated the 20th October, 1725, in describing the ancient limits of Temiscamingue says:—"At this portage is a post (meaning Abbitibi) for trading with the Indians of the neighbourhood and those of Hudson's Bay, who come up the River Monsiepy. The course of this river to the ocean is about eighty leagues.

"This is the most advanced post towards Hudson's Bay; the French, in order not to expose themselves to the insults of savages who may be in the pay of the English on Hudson's Bay, where Fort Monsiepy is situated, do not go further for fur trading. This is the only river of this post which conducts to Hudson's Bay."

Bougainville in his *Mémoire sur l'état de la Nouvelle France à l'époque de la Guerre de Sept Ans, 1757*, says that "Fort Tabitibi is a post dependent upon Temiscamingue, at one hundred and twenty leagues from the preceding one [Temiscaming], towards the Hudson's Bay; there may be one hundred men in both posts; they subsist on fishing and game; they sow no grain and have no village. The post produces annually about one hundred and twenty bundles of furs."—Quoted from *Relations et Mémoires Inédits pour servir à l'histoire de la France dans le pays d'outre-mer*.—Par Pierre Margry, p. 56.

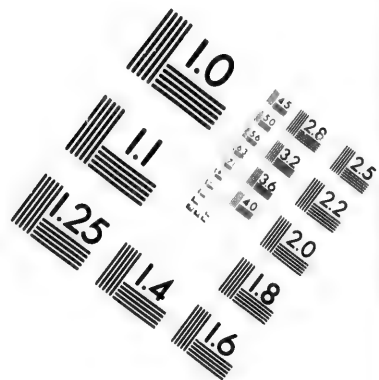
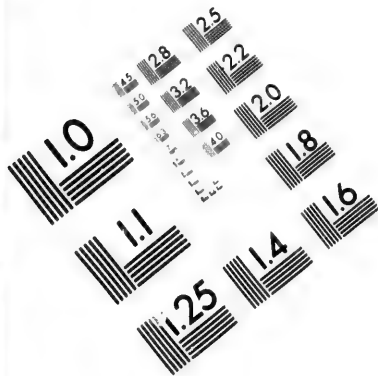
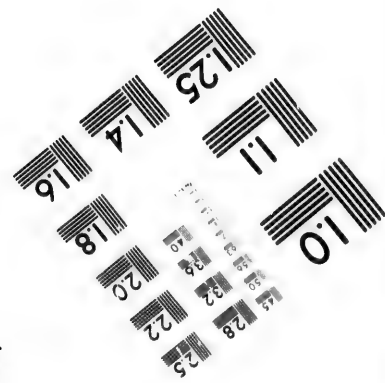
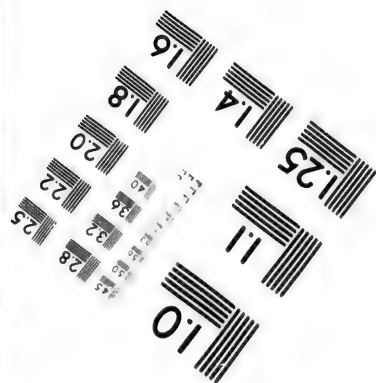
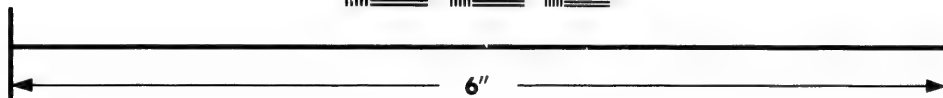
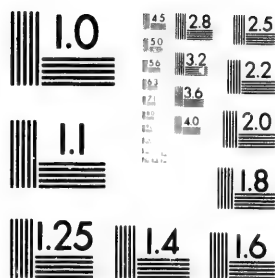


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the sea? It can hardly be contended that because the Hudson's Bay Company had established certain posts and forts at the mouths of some of the rivers that empty into the Bay, they could rightfully claim all the country drained by those rivers and their tributaries. A pretension of this kind was put forward by the United States to the whole of Oregon, because of the discovery of the Columbia River by Captain Gray, but it was expressly repudiated at the time by Great Britain. No such rule is recognized by writers on International Law. It is noticed by Dr. Twiss in his treatise upon the Oregon Boundary, and condemned. Rivers are no more than appendages of the country through which they run, and any settlement or other recognized means of acquiring possession, gives a title to the interior country only so far as it bars the approach to the country in the interior.* One nation cannot acquire and hold a country which can only be approached by trespassing upon the possessions of another country. France, in acquiring the North-West, and in holding the North did not enter any British settlement. In the north she established no new post after 1686. The post of St. Germain upon the Albany River, of which the Hudson's Bay Company complained in 1719, as having been built in 1715, was built by Du L'Hut in 1684. England had not the shadow of a claim to the North-West before the conquest of Canada. No Englishman had gone thither. No act constituting even the lowest degree of title had been done. The right of dominion in a nation, observes Vattel, corresponds to the right of property in an individual. When a nation occupies a vacant country, it imports its sovereignty into the country.† The North-West was a vacant country prior to 1730. It was then occupied not by England but by France, and upon what ground can her right to take possession be questioned? Is it because Charles II granted a charter to territories which he never possessed, a thousand miles away from the Valley of the Saskatchewan? Is it because he granted a charter creating a monopoly which he had no power to create, which, if it were valid, might, by a forced construction, be held to give the Company the right to trade in these distant regions, but gave them no property in the soil?

It has been already shown that the charter granted to the Hudson's Bay Company was granted just as were the charters granted to the Cabots, to Sir Humphrey Gilbert, to Sir Walter Raleigh, to the London Company, and to the Plymouth Company. They all show that the policy of the Crown in granting them was to extend, by such agencies, its dominion over North America. They embraced vast tracts of territory, of which England was never able to claim the sovereignty. Such unlimited grants can only be understood as conveying to the Company chartered as much of the territory granted as they within a reasonable time occupied. The Crown did not wish to place barriers in the way of the extension of its dominions by the discoveries and settlements of its own subjects. Its possessions, in this case, in the neighbourhood of Hudson's Bay, if it had any, were to be extended by the explorations and settlements of the Company. Such a grant, after the lapse of a reasonable time, did not, according to the practice of the times, stand in the way of a new grant of the unoccupied portions of the same territories.‡ Who can doubt, looking at the various charters granted of the country between

* State Papers on the Oregon Boundary, 1845-6. Dr. Twiss's Oregon Question.

† Vattel's Law of Nations, Book 2, sec. 96.

‡ See various English Charters of the country from Nova Scotia to Georgia.

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Maine and Virginia, that had an influential Company applied for a charter to take possession of the country a hundred miles away from the shore of the Hudson's Bay, that they would have obtained it? Who will believe that if at any time before 1712, a company had applied for a grant of the valleys of the Saskatchewan and Red Rivers, that the Hudson's Bay Company would have objected to the grant on the ground that that country belonged to them? "Soon after Great Britain determined on planting colonies in America, the King," says C. J. Marshall, "granted charters to companies of his subjects who associated for the purpose of carrying the views of the Crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country: they purport generally to convey the soil from the Atlantic to the South Sea. The soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. *The extravagant and absurd idea that the feeble settlements made upon the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the land from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the Common Law of European Sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim, nor was it so understood.*"*

"The exclusive right," says Wheaton, "of every individual State to its territorial and other property, is founded upon the title originally acquired by occupancy, and subsequently confirmed by the presumption arising from the lapse of time, and by treaties and other compacts with foreign States.†

To constitute a valid territorial title by occupation, the territory must be previously vacant, and the State must intend to take and maintain possession. The claims of European nations to possessions held by them in the New World discovered by Columbus and other adventurers, was originally derived from discovery, or conquest, or colonization.‡

When Mendoza, the Spanish Ambassador, remonstrated against the expedition of Drake, Queen Elizabeth replied:—"That she did not understand why either her subjects or those of any other European Prince should be deprived of the traffic in the Indies, that as she did not acknowledge the Spaniards to have any right by the donation of the Bishop of Rome, so she knew no right that they had to any places other than those they were in actual possession of. For that their having touched only here and there upon a coast, and given names to a few rivers or capes, were such insignificant things as could in no wise entitle to a propriety, further than in parts where they actually settled, and continued to inhabit."§ Elizabeth, in refusing to recognize the double Spanish title by exploration and investigation, put it out of the power of her successors to found any claim upon the discoveries of Cabot, Hudson, Fox, and James, within the Straits and Bay of Hudson.

In 1824, Mr. Rush, the American Minister at London, in a letter to Mr. Adams, said

* Worcester v. State of Georgia, 6 Peter's S. C. Rep.

† Wheaton's Int. Law, ch. 4, sec. 161.

‡ Ibid. ch. 4, sec. 165.

§ Camden's Annals, anno 1590, p. 360.

that Great Britain "could never admit that the mere fact of Spanish navigators having first seen the coast at particular points, even where this was capable of being substantiated as a fact, *without any subsequent or efficient acts of sovereignty or settlements following on the part of Spain, was sufficient to exclude all other nations from that portion of the Globe.*"*

The principle recognized and maintained by the United States Government is, *'that prior discovery gives the right to occupy, provided that occupancy takes place within reasonable time and is followed by permanent settlement, and by a cultivation of the soil.'*†

In the discussion which took place between Russia and the United States in respect to the boundary upon the North-West Coast of America, the Chevalier de Poletica, the Russian Minister at Washington, laid down the following doctrine as the basis upon which a government might fairly claim the sovereignty of a country:—"The title of first discovery; the title of first occupation; and, in the last place, the peaceable and uncontested possession for more than half a century."‡

The same doctrine was stated in 1826, by Messrs. Huskisson and Addington, the British Commissioners for the settlement of the boundary between the United States and British America. They say:—"Upon the question how far prior discovery constitutes legal claim to sovereignty, the law of nations is somewhat vague and indefinite. It is, however, admitted by the most approved writers that mere accidental discovery or receiving the sovereignty from the natives, constitutes the lowest degree of title."§

If we apply these principles to the British possessions about Hudson's Bay, we shall see that the English monarch could base no valid claim to the possession of the country, upon the discoveries prior to 1667; that the visits of the English to the shore could not hinder the French from extending their settlements towards the north-west, and that (apart from the letters of Prior and M. de Torcy) the English could not claim anything away from the shores of the Bay which they had not before held.

The United States Government, in its discussions with the Government of Spain respecting the western boundary of Louisiana, mentions, in a case like this, the middle distance between two nations' colonies as the proper location of the boundary,§ and Vattel lays down the same rule.¹ If we apply this rule either in drawing a line midway between the two lines drawn by the Plenipotentiaries of Great Britain and France at Utrecht, or midway between Fort Abbitibi, Fort Maune, and Fort Bourbon on the one side, and Moose Fort, Albany Fort, and York Fort on the other, we shall have the boundary line contemplated by the Treaty of Utrecht.

It now only remains to briefly consider whether the boundary contemplated by the Treaty of Utrecht was to remain the boundary under the Order in Council of 1791. That Order

* State Papers, 1825, 1826, p. 512.

† Mr. Gallatin, Appendix to Greenbow's Oregon Boundary; Twiss' Oregon Question, p. 105.

‡ British and Foreign State Papers, 1821-2, p. 485.

§ British and Foreign State Papers, 1817-18, p. 328.

¹ "If at the same time two or more nations discover and take possession of an island, or any other desert land without an owner, they ought to agree between themselves, and make an equitable partition; but if they cannot agree, each will have the right of empire and the domain in the parts in which they first settled." Vattel, bk. 2, ch. 7, sec. 95.

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extends the boundary line upon the east northward "to the boundary of Hudson's Bay." It would seem from these words that Upper Canada was to extend to the shores of Hudson's Bay. It is extremely doubtful whether the grant to the Hudson's Bay Company included any of the country to the south and west of the Bay. Upon the southern and western shores they, no doubt, had the monopoly of the trade confessedly granted them, but their territorial rights lay within the entrance of the Straits and Bay, which might fairly enough describe the country east of Hudson's Bay, but could not be held to embrace the country lying upon the outside of the line of entrance to the Straits and Bay. No lawyer after the period of the Revolution, in 1688, would hold that the King had power to grant a monopoly of trade, even though he had been sovereign of the country. It is obvious, then, that there was no right of property or government in the Company which this extension of Upper Canada would take away. The Company's rights of property lay in a different direction, and even with regard to the country east of the Bay, 49th George 3rd, c. 27, sec. 14, embraced the country from the St. John's River to the coast of Labrador, northward to Hudson's Straits. This Act, in 1809, severed from Lower Canada this territory, and re-annexed it to Newfoundland. The description embraced territory within the line drawn from Cape Perdrix, though not within the line drawn by De Lisle, which may be taken to be drawn as laid down by the French Plenipotentiaries. But if we grant that it was not intended to go beyond the limits contemplated by the Treaty of Utrecht, the boundary line upon the north-east would be located midway between Fort Abbitibi and Moose or Monsonis Fort; midway between the fort on the Upper Albany and Fort Albany; midway between Lake Winnipeg and Port Nelson.

The limits of the Province of Ontario, then, are, the international boundary upon the south, westward to the Rocky Mountains; the Rocky Mountains, from the international boundary, northward to the most north-westerly sources of the Saskatchewan; the northern watershed of the Saskatchewan eastward, until it intersects the boundary line midway between Lake Winnipeg and Port Nelson at the mouth of Nelson River; and, upon the north-east the line already indicated, drawn midway between the posts held by England and France just before Canada was ceded to Great Britain.

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